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Supreme Court of the United States

OCTOBER TERM, 1951

No. 35

FRANK CARLSON, MIRIAM CHRISTINE STEVENSON, DAVID HYUN AND HARRY CARLISLE, PETITIONERS,

vs.

HERMAN R. LANDON, DISTRICT DIRECTOR OF IMMIGRATION AND NATURALIZATION, UNITED STATES DEPARTMENT OF JUSTICE

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

FILED APRIL 28, 1951.

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IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION

No. 12491-BH

In the Matter of FRANK CARLSON, also known as SOLOMON SKOLNICK, Petitioner for Writ of Habeas Corpus

PETITION FOR WRIT OF HABEAS CORPUS—Filed November 2, 1950

Comes now John W. Porter, as attorney for Frank Carlson, also known as Solomon Skolnick, and petitions this Honorable Court for a writ of habeas corpus directing the District Director of the Immigration and Naturalization Service at Los Angeles to produce the said Frank Carlson before this Court on a date and at a time to be set by this Court, and then and there to show cause, if any he has, why the said Frank Carlson should not be released from custody upon his bond; and in support thereof your petitioner alleges as follows:

I

That said Frank Carlson (hereinafter for convenience called petitioner) is, and at all times since October 21, 1950, has been, unlawfully imprisoned, detained and restrained of his liberty by H. R. Landon, District Director of the Immigration and Naturalization Service, as the agent of the Attorney General of the United States; that petitioner is presently confined and detained by said District Director [fol. 3] without bond at Terminal Island, California, and that such imprisonment, detention, confinement and restraint are illegal, arbitrary and without authority in law, as hereinafter alleged.

II

On or about October 28, 1947, the Attorney General of the United States caused to be issued, and on or about November 3, 1947, to be served upon petitioner, a warrant for his arrest, charging in substance that petitioner was an alien found to be in the United States in violation of the immigration laws thereof, in that he was after entry an alien

who is a member of and affiliated with an organization, association, society and group that believes in, advises, advocates and teaches the overthrow by force or violence of the Government of the United States, in violation of the Act of October 16, 1918.

III

That said warrant on its face authorized the release of petitioner under bond in the sum of $1,000.00, and that following his said arrest under said warrant petitioner was released upon posting bond in such amount; that at all times since on or about November 3, 1947, up to and including October 20, 1950, petitioner was at liberty under such bond.

IV

That on June 13, 14, 15, 16, 22, 23, 24 and 27, 1949, petitioner was duly ordered by the District Director of the Immigration and Naturalization Service for the San Francisco District to appear at hearings upon said warrant of arrest [fol. 4] for deportation, and that upon each of said dates petitioner did in fact appear for such hearings, which were held on said dates before a Presiding Inspector of the Immigration and Naturalization Service.

V

That thereafter, and in or about the month of February, 1950, the said hearings and deportation proceedings against petitioner were in substance and effect held to be void by the decision of the United States Supreme Court in the case of *Sung v. McGrath* (339 U. S. 33), and by virtue thereof new hearings under said warrant of arrest were required. That prior to the institution of such new proceedings the deportation case again petitioner was at his request transferred from the San Francisco to the Los Angeles District of the Immigration and Naturalization Service, and that said case at all times since January 1, 1950, has been, and now is, pending in the Los Angeles District of the Service.

VI

That on May 15, 1950, the District Director of the Los Angeles District of the Immigration and Naturalization Service by mail served upon petitioner and upon petitioner and his counsel, notice of a hearing under said warrant of

arrest, to be conducted before a Hearing Examiner of said Service on July 25, 1950. That on July 5, 1950, said District Director *by mail upon* petitioner and his counsel, notice of hearings upon said warrant of arrest to be held at Los [fol. 5] Angeles on September 7 and 8, 1950. That pursuant to said last mentioned notice said petitioner duly appeared at the Los Angeles offices of the Immigration and Naturalization Service on September 7, 1950; that on said date such hearing was commenced; that following the examination of two witnesses said hearing, at the request of the Government, was continued to a date to be set thereafter.

VII

That at all times from September 7, 1950, to date, petitioner has been available, ready and willing to appear and attend at such hearing or at any other lawful proceeding under said warrant of arrest, and is now so available.

VIII

That petitioner was born in Poland in 1913 and entered the United States in 1920 at the age of six years. That at all times since his said entry into the United States petitioner has been, and now is, a resident of the United States and has made and maintained his home here. That prior to the commencement of said deportation proceedings petitioner filed notice of intention to apply for United States citizenship and that such naturalization proceeding was interrupted by the initiation of deportation proceedings against him, as aforesaid.

IX

That continuously for fifteen years last past petitioner has been a resident of the State of California and that since the last part of 1949 he has at all times been, and now is, [fol. 6] a resident of the City of Los Angeles.

X

That said Frank Carlson is married to a native-born citizen and is the father of two children, presently aged seven and two years, both of whom were born in the State of California.

XI

That on Saturday, October 21, 1950, at approximately midnight, petitioner was arrested by agents of the District Director of the Immigration and Naturalization Service at Los Angeles, taken into custody and lodged in the County Jail of Los Angeles County. That at the time of such arrest petitioner was informed by said agents that the bond of $1,000.00 under which he had been at liberty since November 3, 1947, had been revoked.

XII

That on October 24, 1950, petitioner by his attorney filed in this Court a petition for writ of habeas corpus, alleging all of the foregoing facts. That pursuant to said petition this Court on said date issued its order to show cause, directing said H. R. Landon, as District Director of the Immigration and Naturalization — to appear before this Court on October 30, 1950, and then and there to show cause, if any he might have, why petitioner should not be released from custody upon his bond.

[fol. 7]

XIII

That on October 30 and 31, 1950, hearings were had before the Honorable Ben Harrison, Judge of this Court. That at the conclusion of such hearing on October 31, 1950, and while petitioner remained in custody, said District Director caused to be served upon petitioner a warrant of arrest dated October 31, 1950, alleging in substance that petitioner has been found in the United States in violation of the immigration laws and is subject to deportation thereunder in that he has been after entry an alien who was a member of the Communist Party of the United States, in violation of Section 1(2)(C) of the Act of October 16, 1918, as amended. That said warrant further recited, "Pending determination of deportability, the alien named is to be continued in custody. This warrant supersedes that issued on the 20th day of October, 1947".

XIV

That by virtue of the issuance and service of said warrant on October 31, 1950, the petition for a writ of habeas corpus filed on behalf of petitioner October 24, 1950, as aforesaid, became, and was, moot. That by virtue of the fact that said

petition had become moot petitioner on November 1, 1950, moved the Court to dismiss the said petition without prejudice, and said motion was thereupon granted.

XV

Petitioner is informed and believes and on the basis of such information and belief alleges that it is the intention [fol. 8] of said H. R. Landon, District Director of the Immigration and Naturalization Service, to hold petitioner in custody without bail indefinitely and until the final determination of his deportability.

XVI

That in causing the arrest and detention of petitioner upon and under the warrant of arrest issued October 28, 1947, and served November 3, 1947, said District Director acted without authority in law, and the arrest and detention thereunder were false, illegal and void.

XVII

That in causing the arrest and detention of petitioner upon and under said warrant dated October 28, 1947, and in causing the arrest of petitioner upon and under said warrant issued October 31, 1950, and in detaining petitioner thereunder without bail, said District Director has acted, and is acting, as the agent and representative of the Attorney General of the United States. That such arrest and detention under the circumstances hereinabove set forth have at all times constituted, and now constitute, an abuse of the discretion vested in the Attorney General of the United States by section 20 of the Immigration Act of February 5, 1917, as amended (57 Stat. 553), in the following, among other, respects:

(a) That no facts or circumstances exist or can be shown to justify revocation of a bond under which petitioner has heretofore been at liberty, as hereinbefore [fol. 9] alleged;

(b) That no facts or circumstances exist or can be shown to justify detention of petitioner indefin-tely or at all, without bond;

(c) That petitioner at all times herein mentioned has been, now is, and will continue to be, available to ap-

pear and will appear at any and all hearings or other lawful proceedings in connection with the determination of his deportability;

(d) That petitioner at all times herein mentioned has been, and now is, a law-abiding resident of the State of California, and since 1949 of the City of Los Angeles, with his home and family in the City of Los Angeles and with all of his interests and activities centered in and around the City of Los Angeles;

(e) That by virtue of the grant by the Supreme Court of the United States on October 23, 1950 of a petition for Writ of Certiorari in the case of *United States* v. *Dennis, et al.* for the express purpose of reviewing the constitutionality of the Statute known as the Smith Act of 1940 (54 Stat. 670, 671), the deportability of petitioner under said Act is placed in serious doubt and the validity of the charges against him as alleged above is placed in question.

XVIII

That the action of the said District Director in arresting [fol. 10] and detaining petitioner as aforesaid at all times constituted, and now constitutes, a denial of due process of law to petitioner in the following, among other, respects:

(a) That said petitioner was arrested as aforesaid on October 21, 1950, without warrant and without authority in law;

(b) That said District Director revoked the bond under which petitioner has been at liberty as aforesaid without notice to petitioner or his counsel, and without hearing;

(c) That such bond was revoked without claim or showing by said District Director of any facts, circumstances or conditions warranting any change in the terms upon which petitioner was, and has been, at liberty upon his bond;

(d) That by such arrest and detention petitioner has been deprived without due process of law of the opportunity to earn his living and to support himself and those dependent upon him;

(e) That the deportation proceedings against petitioner are in their initial stages and are likely to con-

tinue for many months, and that his detention without bail throughout such proceedings will deprive him of his liberty arbitrarily and in violation of the due process clause of the Fifth Amendment to the Constitution of the United States.

[fol. 11]

XIX

That the detention of petitioner without bond as aforesaid constitutes a denial of bail in violation of the Eighth Amendment to the Constitution of the United States, and under the circumstances hereinbefore alleged further constitutes cruel and unusual punishment, in violation of said Eighth Amendment.

XX

That section 20 of the Immigration Act of February 5, 1917, as amended by section 23 of Public Law 831, 81st Congress (commonly known as Subversive Activities Control Act of 1950) and section 1 of the Act of October 16, 1918 (8 U.S.C. 137), as amended, are, and each of them is, unconstitutional and void in that they deprive persons, including petitioner, of liberty and property without due process of law, in violation of the Fifth Amendment to the Constitution of the United States in that they abridge the freedom of persons, including petitioner, of speech, the press and assembly and the right to petition the government for redress of grievances, in violation of the First Amendment to the Constitution of the United States, and in that they purport to authorize indefinite detention of persons, including petitioner, without bond prior to final determination of deportability.

XXI

That this petition is made and verified by John W. Porter as attorney for petitioner, and not by petitioner as the [fol. 12] person in custody, for the reason that petitioner is confined and restrained of his liberty at Terminal Island, California, that petitioner is not permitted to see anyone, including counsel, after 5:00 P.M. of any day, and that it is not practicable for the undersigned to travel to Terminal Island and visit petitioner for the purpose of securing his verification during the hours when petitioner may be visited; and for the further reason that the undersigned has personal knowledge of many of the facts and circumstances hereinabove alleged.

XXII

That no previous application for a writ of habeas corpus has been made in this matter to any other court, but that previous application was made to this Court as hereinabove alleged in paragraph XIV.

XXIII

That notice of the presentation of this application has been served upon said District Director and upon the United States Attorney.

Wherefore, said petitioner prays that a Writ of Habeas Corpus may be granted directed to H. R. Landon, District Director, Immigration and Naturalization Service, and to any Sheriff; Marshal, Constable, or other peace officer having custody of the body of petitioner, commanding him to have the body of petitioner before this Court at a time and place to be specified, to do and receive what shall then and there be considered concerning petitioner, together with the time and cause of his detention, and said Writ; that peti-
[fol. 13] tioner shall not be transferred nor removed pending said return from or out of the jurisdiction of this Court; and that pending hearing hereupon petitioner may be restored to his liberty upon reasonable bond.

Dated this 2nd day of November, 1950.

(S.) John W. Porter.

Duly sworn to by John W. Porter. Jurat omitted in printing.

Received copy of the within Notice of Presentation of Petition for Writ of Habeas Corpus and Petition for Writ
[fol. 14] of Habeas Corpus this 2nd day of November, 1950.

Ernest A. Tolin, U. S. Attorney, By Walter S. Binns.

Received copy of the within Notice of Presentation of Petition for Writ of Habeas Corpus and Petition for Writ of Habeas Corpus this 2nd day of November 1950.

H. R. Landon, District Director, Immigration and Naturalization Service, By H. R. Landon.

[File endorsement omitted.]

[fol. 15] IN UNITED STATES DISTRICT COURT

ORDER TO SHOW CAUSE—November 3, 1950

Upon reading the verified petition of John W. Porter, petitioner, on file herein,

It is hereby ordered that H. R. Landon, District Director of the Immigration and Naturalization for the Los Angeles District, appear before the above entitled Court in the Courtroom of the Honorable Ben Harrison, at the United States Post Office and Court House Building, 312 North Spring Street, Los Angeles, California, on the 6 day of November, 1950, at 2 P.M. of said day, then and there to show cause, if any he may have, why he should not release from his custody, or the custody of such officers or agents of the Los Angeles District of the Immigration and Naturalization Service as may have custody of the same, upon bond in a reasonable sum, the body of Frank Carlson, also known as Solomon Skolnick.

Good cause being shown therefore, it is hereby ordered that this Order and the said Petition may be served upon said District Director on or before November 3, 1950, at 5:00 P.M. of said day.

Dated this 3rd day of November, 1950.

(S.) Ben Harrison, Judge of the United States District Court.

[File endorsement omitted.]

[fol. 16] IN UNITED STATES DISTRICT COURT

AMENDMENT TO PETITION FOR WRIT OF HABEAS CORPUS—Filed November 6, 1950

Petitioner, Frank Carlson, by his counsel, with leave of court, hereby amends his petition for writ of habeas corpus on file herein by adding thereto the following paragraph to be designated paragraph XVIII A:

XVIII A

Petitioner is informed and believes and on the basis of such information and belief alleges that in directing that petitioner be held without bond, as aforesaid, the Attorney

on appeal to the United States Court of Appeals for the Ninth Circuit herein:

1. The Petition for Writ of Habeas Corpus;
2. The Amendment to Petition for Writ of Habeas Corpus;
3. The Order to Show Cause Why Habeas Corpus Should Not Issue;
4. The respondent's Return to Order to Show Cause Why Writ Should Not be Granted;
5. The petitioner's Motion to Strike Portions of Return to Order to Show Cause;
6. The petitioner's Answer to Return to Order to Show Cause Why Writ Should Not be Granted;
7. Stipulation for Submission of Action;
8. Order Discharging Writ of Habeas Corpus, dated November 13, 1950;
9. Memorandum Opinion of Honorable Ben Harrison, United States District Judge, dated November 10, 1950;
10. Minute Order Discharging Writ and Minute Order denying petitioner-appellant's application for bail pending appeal, entered November 10, 1950;

[fol. 44] 11. Reporter's Transcript of Hearing on November 7, 1950, or such portions thereof as may be designated;

12. Notice of Appeal dated November 10, 1950.

Dated this — day of November, 1950.

Margolis and McTernan, by (S.) John W. Porter, Attorneys for Petitioner-Appellant. Ernest A. Tolin, United States Attorney, (S.) Walter S. Binns, Chief Assistant United States Attorney.

[File endorsement omitted.]

[fol. 45] Clerk's Certificate to foregoing transcript omitted in printing.

Edmund L. Smith, Clerk, by —— ——, Chief Deputy.

[fol. 45a] UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 12742

FRANK CARLSON, Also Known as Solomon Skolnick, Appellant,

vs.

HERMAN R. LANDON, District Director of the Immigration and Naturalization Service, United States Department of Justice, Appellee

Appeal from the United States District Court for the Southern District of California, Central Division

Proceedings Had in the United States Court of Appeals for the Ninth Circuit

(Upon Appeal from Order of District Court of Nov. 13, 1951)

[fol. 45b] UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Before Stephens, Healy and Bone, Circuit Judges

ORDER OF SUBMISSION—December 1, 1950

Ordered (1) motions for bail pending appeal (2) that causes be heard on typewritten transcript of record and typewritten briefs, and (3) cause on merits, argued by Mr. John W. Porter, counsel for appellant Carlson, and by Mrs. Rose S. Rosenberg, counsel for appellant Stevenson, and by Mr. John Caughlan, counsel for appellants Mangaoang and Sasieff, and by Messrs. Walter Binns and John E. Belcher, Assistants United States Attorney, and by Mr. John P. Boyd, Special Assistant to the Attorney General, counsel for appellees, and submitted to the court for consideration and decision, counsel for respective parties to file further briefs in five days.

[fol. 45c] UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Before Stephens, Healy and Bone, Circuit Judges

ORDER DIRECTING FILING OF OPINION AND FILING AND RECORDING OF JUDGMENT—December 16, 1950

Ordered that the typewritten opinion this day rendered by this court in above cause be forthwith filed by the Clerk, and that a judgment be filed and recorded in the minutes of this court in accordance with the opinion rendered.

[fol. 45d] IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 12,742

FRANK CARLSON, Also Known as Solomon Skolnick, Appellant,

vs.

HERMAN R. LANDON, District Director of the Immigration and Naturalization Service, United States Department of Justice, Appellee

Appeal from the United States District Court for the Southern District of California, Central Division

OPINION—December 16, 1950

Before Stephens, Healy and Bone, Circuit Judges

STEPHENS, Circuit Judge:

Frank Carlson is being held in custody without bail, as a deportable alien, by Herman R. Landon, District Director of the Immigration and Naturalization Service, United States Department of Justice (called herein Director). He seeks his liberty on reasonable bail through the petition for the writ of habeas corpus by his attorney. Since Carlson is referred to in the record as the petitioner we shall follow that practice.

Petitioner was arrested and is being held under a warrant issued by Landon upon instruction of the Attorney

General of the United States, dated in October, 1950 (called herein the 1950 warrant); in which it is stated: "The Act of Oct. 16, 1918, as amended [by Internal Security Act of 1950 (ch. 1024, Pub. Law 831)] in that he has been, after entry, a member of the following class set forth in Section 1(2)(c) of said Act: An alien who was a member of the Communist Party of the United States," and in which it is [fol. 45e] provided: "Pending determination of deportability, the alien named is to be continued in custody. This warrant supersedes that issued on the 20th day of October, 1947." [called herein the 1947 warrant]

At the time of service of the 1950 warrant, petitioner was at liberty under bail which he had posted after his arrest under the 1947 warrant wherein he was charged with being a member of an organization which believes in and advocates violence to overthrow the Government of the United States (Im. Act of Oct. 16, 1918), and deportable. The bond mentioned was "revoked" soon after or before service of the 1950 warrant. Apparently the charge under the 1947 warrant has been abandoned, or, rather, it has been merged in the proceeding under the 1950 warrant.

The district court issued its order to show cause in the habeas corpus proceedings and the Director returned that he held petitioner upon the terms of the 1950 warrant and upon the allegation that there was "reasonable cause to believe" that petitioner's release would be prejudicial to the public interest and would endanger the welfare and safety of the United States. Petitioner answered, alleging that the return was no sufficient justification and that the restraint without bail is without authority of law and that he has never been informed of any act which it is feared he may commit and that there is no cause for believing that he would commit any act of prejudice against the welfare of the United States and that he has repeatedly requested the Director to inform him as to what he has done or what it is feared he would do upon his release but that no answer has been forthcoming.

Petitioner further alleges that he was born in Poland in 1913 and entered this country at the age of 6 years, has lived in California for the last 15 years and prior to deportation proceedings had filed his application for citizenship; he is married and is the father of two California-born minor children; there is no basis for fearing that he will commit any act detrimental to the United States should he be freed on

bail; the deportation proceedings are liable to continue for many months; he will hold himself in readiness to appear at any and all sessions of hearings on the warrant and he has [fol. 45f] responded at all hearing sessions on the warrant of 1947 while at liberty under bail; the Internal Security Act of 1950 is unconstitutional as violative of the Fifth Amendment. Although the petitioner does not do so, Miriam Christine Stevenson in a companion case to which we allude in Note 4 contends that the United States' adherence to the United Nations has something to do with the issues of this case.

It is provided by the Internal Security Act of 1950, under which the 1950 warrant was issued, in Section 23 that: "Pending final determination * * *, such alien may, in the discretion of the Attorney General (1) be continued in custody; or (2) be released under bond. * * *" Correctly, as we hold, the court decided that this provision does not give the Attorney General or the Director absolute and final power to deny bail. Instead, the court held that the language quoted was but a clarification of language in Section 156, Title 8, U.S.C.A., of which it was amendatory, and left bail to the discretion of the Attorney General rather than to his unlimited power to deny it, and cited *United States ex rel. Zapp v. Dist. Dir.*, 2 Cir., 120 F. 2d 762 (1941), and *United States ex rel. Potash v. Dist. Dir.*, 2 Cir., 169 F. 2d 747 (1948).[1] These cases were decided under the section before the 1950 amendment and held that the Attorney General's discretion was not absolute but could be reviewed as to its reasonableness.

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[1] It is said in United States ex rel. Potash v. Dist. Dir., 2 Cir., 169 F. 2d 747 (1948), at p. 751: "The foregoing decisions and also, as it seems to us, the general spirit of our institutions make it improbable that Congress intended to give the Attorney General unlimited power over the admission to bail of aliens against whom deportation proceedings are brought. We think that it requires more than the general grant of power to fix bail in Section 156 to exempt the Attorney General from all control in the exercise of that function even if he should be shown to have acted in an arbitrary manner. This interpretation is particularly indicated in such a situation as the present where personal liberty is involved and there has been no determination that the alien is deportable."

We agree. And we add, the very fact that the Attorney General (or his assistants) has the power to grant bail before a deportation hearing or refuse it, carries with it the necessity of exercising discretion and certainly discretion must be based upon some phase of fact. It will be [fol. 45g] noticed that the Director's return contains a statement that there is "reasonable cause to believe" that petitioner's release would be prejudicial to the United States, a statement which connotes the exercise of discretion.

At the hearing the court invited petitioner to proceed to show facts relative to the issue of abuse of discretion but he declined to do so stating that he had alleged facts on the relevant issues which had not been denied. Thereupon the court dismissed the petition, holding that there had been no showing as to abuse of discretion. We think the court erred at this point.

It is well settled that there is no absolute right of an alien to be accorded bail after the service of a warrant for deportation and it is equally well settled that there is no absolute right of an alien to remain in this country. At the same time it is not claimed in this case, as the law now stands, that a legally admitted alien can be deprived of his liberty without good cause therefor as measured by the applicable law or that he can be deported without due process of law. Under statute and warrant of authorization, designated United States immigration officers may intercept individual aliens and subject them to hearings for the purpose of determining whether they are deportable and restrain them of their liberties for enforced deportation after hearing, but detention for long and unreasonable periods before hearing is illegal. There is an admirable collection of authorities upon most if not all of these fundamental points in *Skeffington, Im. Comm'r v. Katzeff, et al.*, 1 Cir., 277 F. 129 (1922). With these generalizations in mind, we turn to the specific law under which petitioner is being held. But first as to the inducing causes for the enactment of the Security Act of 1950.

From the beginning of their civilized history, the American continents have been viewed by oppressed peoples as the lands of freedom and opportunity. Notwithstanding occasional acts of oppression and the now happily abolished practice of human ownership, the governments established

[fol. 45h] in the New World have provided freedom and opportunity to the individual. It is fixed in the Constitution of the United States that individual right to liberty under due process of law is the prime end and concern of established governments. But charters are not self-executing and the old spiritually awakening cry of "Eternal Vigilance is the Price of Liberty" is never an outworn cliche.

The vision of freedom and opportunity has beckoned to our shores many law-abiding level-headed people eager to understand and practice our way of living while others have come full-charged with misconceived notions of their own unsuited to the American scheme of government, often centered upon license with little restraint. Others have come with treacherous plans to replace our form of government with age-old tyrannical rule or with anarchistic disruption of law and order.

Only in the last few years, however, a powerful foreign government, one for whose liberation from a world-dictator-plan we only recently sacrificed our sons and our treasure, has sought by stealth and abandon of morals and gratitude, to obstruct, disrupt, and over-throw our government and erect upon its ruins a branch of its own dictator absolutism. The eternal war of dictator dominance over the rightful liberties of the individual has flared into a consuming flame imposing upon this generation the duty of smothering it to impotence by sacrifices we little realize. And this appalling duty must not be served by fighting to a victory which in itself will be a defeat for the principles we fought for.

With these unpleasant truths showing plainly above the sea of unrealistic altruism, Congress put up the bars to immigration and provided rules for expulsion of the destructionists from our country. In the early part of 1950 Congress gave especial attention to the growing, dangerous fact that aliens in our midst were conspiring with naturalized and native-born citizens in prostituting the American political party system by affecting to act within it through a so-called Communist Party of the United States. It enacted the Internal Security Act of 1950 (Ch. 1024, Pub. Law 831 [H.R. 9490]) in which it is stated:

> [fol. 45i] "Sec. 2. As a result of evidence adduced before various committees of the Senate and House of Representatives, the Congress hereby finds that

"(1) There exists a world Communist movement which, in its origins, its development, and its present practice, is a world-wide revolutionary movement whose purpose it is, by treachery, deceit, infiltration into other groups (governmental and otherwise), espionage, sabotage, terrorism, and any other means deemed necessary, to establish a Communist totalitarian dictatorship in the countries throughout the world through the medium of a world-wide Communist organization.

"(2) The establishment of a totalitarian dictatorship in any country results in the suppression of all opposition to the party in power, the subordination of the rights of individuals to the state, the denial of fundamental rights and liberties which are characteristic of a representative form of government, such as freedom of speech, of the press, of assembly, and of religious worship, and results in the maintenance of control over the people through fear, terrorism, and brutality.

"(3) The system of government known as a totalitarian dictatorship is characterized by the existence of a single political party, organized on a dictatorial basis, and by substantial identity between such party and its policies and the government and governmental policies of the country in which it exists.

"(4) The direction and control of the world Communist movement is vested in and exercised by the Communist dictatorship of a foreign country.

"* * *"

Following these statements of proven facts the Act sets out the methods followed and practiced by the destructionists. All of these should be carefully read and pondered by the so-called well-intentioned intellectuals, fellow-travelers and parlor-Communists. Then follows the statement im- [fol. 45j] mediately striking the instant case:

"(13) There are, under our present immigration laws, numerous aliens who have been found to be deportable, many of whom are in the subversive, criminal, or immoral classes who are free to roam the country at will without supervision or control.

"(14) One device for infiltration by Communists is by procuring naturalization for disloyal aliens who use their citizenship as a badge for admission into the fabric of our society.

"(15) The Communist movement in the United States is an organization numbering thousands of adherents, rigidly and ruthlessly disciplined. Awaiting and seeking to advance a moment when * * * overthrow of the Government of the United States by force and violence may seem possible of achievement, it seeks converts far and wide by an extensive system of schooling and indoctrination. * * *."

There is more which we need not quote.

Out of this moving factual appraisal of an outstanding conspiracy of aliens and a few mentally intoxicated or drugged citizens and a sprinkling of the vicious, directed by a foreign government, came the authority of Congress to the Attorney General of the United States in his capacity as official head of immigration and naturalization activities to deport aliens who, any time since their entry, have been members of the Communist Party of the United States.[3]

We pass as wholly unmeritorious the contention that the Act is unconstitutional as to the issues here. And the startling contention by a petitioner in a companion case[3a] that the United Nations has taken over in the field of immigration and alien law need not divert us from the consideration [fol. 45k] of the United States as a sovereign state. We come to the central point of the case.

Habeas corpus, as we know, is civil in nature and the petitioner bears the burden of proving that his retention is illegal upon regular process being shown for the detention. We have already said we agree that it was the duty of the Attorney General or his assistant in the immigration service to admit petitioner to bail pending the habeas corpus proceedings unless he had good reason for refusing it, although

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[3] Since aliens have no franchise to vote but, as it appears, nevertheless may be members of the Communist Party, that organization is not solely a political party in the sense that we ordinarily use that term.

[3a] We mention this because we refer to this opinion in that case.

it is arguable from the facts upon which Congress acted that it meant to clothe the Attorney General with the unrestricted power to hold the alien without bail. So far as we are informed, the several United States district and appellate courts which have spoken on the subject have agreed that the Act cannot be so construed. The return to the Show Cause reveals the warrant as regular and its authenticity is not disputed. Petitioner declined to produce evidence but at this juncture of the case it will not do to say that he has failed entirely.

At the close of the hearing on the order to show cause, the parties stipulated and the judge acted under the stipulation that "* * * it is deemed that a writ of habeas corpus has been issued and that the hearing has been had upon a return to the writ. For said purpose the Return to the Order to Show Cause Why Petition for Writ of Habeas Corpus Should Not Be Granted and the Answer (sic) thereto are deemed the return and traverse to the writ. The determination upon this hearing shall be either that the writ is granted or that the writ is discharged."

There is, then, no denial of petitioner's allegations as to residence, family status, his attendance upon hearings under the 1947 warrant, and these allegations must be taken as true. See *In re Smith*, 143 Cal. 368, 77 Pac. 180 (1904); *Daly v. Elton*, 195 U.S. 242 (1904); *Whitten v. Tomlinson*, 160 U.S. 231 (1895), in which at p. 242 it is said: "In a petition for a writ of *habeas corpus*, verified by the oath of the petitioner, * * * facts duly alleged may be taken to be [fol. 451] true, unless denied by the return, or controlled by other evidence. But no allegation of fact in the petition can be assumed to be admitted, unless distinct and unambiguous."

It would seem, therefore, that the return is insufficient when laid beside petitioner's undenied allegations for the reason that petitioner has gone about as far as he could go to prove his claim that his release will not prejudice the United States. If there is good reason for the action of the Director in denying bail it is locked in the Director's own chest of knowledge and is unrevealed for proof against it. Surely, in this circumstance, petitioner is not burdened by the impossible task of imagining and refuting causes which may have had a bearing upon the Director's discretion. Unless it is true that he is a bad risk, and the trial

court could not judicially conclude that he was merely upon the Director's say so. What more could petitioner have alleged in his answer or petition or could have attempted to prove at the hearing? A man's liberty is very different from a property right in an ordinary civil action and, although it is hornbook to say that habeas corpus is in nature a civil action, it remains that it deals in personal liberty as effectually as a criminal action. So far as our knowledge goes we know of no proceeding outside of the war powers which keeps a man imprisoned without a hearing as to the cause. See *United States v. Grayson*, 2 Cir., 166 F. 2d 863 (1948); *United States ex rel. Schlueter v. Watkins*, 67 F. Supp. 556, 560 (1946), aff. 2 Cir., 158 F. 2d 853 (1946). In 1 *Greenleaf on Evidence* 154 § 79 (16th ed. 1899) it is said: "* * * where the subject matter of a negative averment lies peculiarly within the knowledge of the other party, the averment is taken as true, unless disproved by that party. * * *."

But the Director is wrong in assuming that petitioner is arguing to a point inconsistent with the principle that a petitioner in habeas corpus has the burden of showing that his detention is legally wrongful. In this phase of the case petitioner is not here questioning the sufficiency of the warrant or the return thereon as to its authenticity. He is not questioning the due process leading to the issuance of a warrant to a prison warden upon conviction and sentence after a court trial of facts, as is the case in a habeas corpus proceeding related to a criminal case. He is contesting the legality of his detention upon the ex parte finding of the Director and of the Director's order thereon [fol. 45m] which is a part of the Director's return. There is no return at all made upon this, the real issue here, except the criptic statement that the Director has information leading him to believe that petitioner's release would be harmful to the country. If the Director is given the power to use his discretion but that such discretion must not be abused, and the trial court so held and we agree, then the Director's return, to be good, must state some fact upon which a reasonable person could logically conclude that the denial of bail is required to protect the country or to secure the alleged alien's presence for deportation should an order to that effect be the result of the hearing. Without this much, the return is insufficient unless it is supplemented by affidavits or with evidence at

the habeas corpus hearing, and this has not been done. In this situation the burden of the petitioner is not shifted to the Director and the Director is not required to "show his hand." All he must do is to assert fact, not conclusion, as the basis for his action. The truth of the Director's reasons for denying bail if at all reasonable is not triable by the district court in habeas corpus any more than the truth of allegations in a criminal charge is decided by a magistrate in a preliminary hearing. But whether there is factual reason back of the action must be shown in either proceeding. The imagination can hardly create a situation more incompatible with the spirit of our institutions than that one civil official's completely secret viewpoint could be the basis of sustained imprisonment.

If the Director's action was upon the theory argued in the briefs, but which was correctly rejected by the trial court, that there is no question of discretion in the case, that the Director, under instruction from the Attorney General, can hold or release the alien without revealing his reason for the choice, most of this opinion is surplusage. No doubt the uncertainty mentioned will be cleared up in the hearing which we order in the next paragraph.

The judgment is reversed and the cause is remanded with direction to the district court to take the undenied material allegations of petitioner's answer as true and to give the Director an opportunity to reveal reasons for exercising his discretion, if he did exercise discretion in denying bail, and to take note of facts relating to delays in the deportation hearings, and decide the issue upon such [fol. 45n] evidence and any other proper evidence which may be offered and received,[4] all in conformity with this opinion.

Reversed and remanded.

(Endorsed:) Opinion. Filed Dec. 16, 1950. Paul P. O'Brien, Clerk.

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[4] The record shows that the decision was had upon the hearing of the Show Cause order but it was stipulated that the judgment should be as though the writ issued.

There are three companion cases (appealed from the same court at Los Angeles), to the one specifically treated in the text of this opinion and the facts and issues are so

[fol. 450] UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 12742

FRANK CARLSON, etc., Appellant,

vs.

HERMAN R. LANDON, etc., Appellee

JUDGMENT—December 16, 1950

Appeal from the United States District Court for the Southern District of California, Central Division.

This cause came on to be heard on the Transcript of the Record from the United States District Court for the Southern District of California, Central Division, and was duly submitted.

On consideration whereof, it is now here ordered and adjudged by this Court, that the order of the said District Court in this cause be, and hereby is reversed and this cause be, and hereby is remanded to the said District Court with directions to the said District Court to take the undenied material allegations of petitioner's answer as true and to give the Director an opportunity to reveal reasons for exercising his discretion, if he did exercise discretion in denying bail, and to take note of facts relating to delays in the deportation hearings, and decide the issue upon such evidence and any other proper evidence which may be offered and received, all in conformith with the opinion of this court.

(Endorsed) Judgment. Filed and entered December 16, 1950. Paul P. O'Brien, Clerk.

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similar that little attempt to discuss the applicable law is made in our treatment of them. They are:

12743, Stevenson v. Landon;
12744, Hyun v. Landon; and
12745, Carlisle v. Landon.

There are two cases appealed from the District Court for the Western District of Washington which present like questions of law upon comparable but somewhat different facts. They are:

12757, Mangaoang v. Boyd; and
12758, Sasieff v. Boyd.

[fol. 46] **Supplemental Record**

IN UNITED STATES DISTRICT COURT

WRIT OF HABEAS CORPUS

The President of the United States of America to H. R. Landon, District Director of the Immigration and Naturalization Service, Los Angeles, California, Greeting:

You are hereby commanded, that the body of Frank Carlson, also known as Solomon Skolnick by you restrained of his liberty, as it is said detained by whatsoever names the said Frank Carlson, also known as Solomon Skolnick may be detained, together with the day and cause of his being taken and detained, you have before the Honorable Ben Harrison, Judge of the United States District Court in and for the Southern District of California, at the courtroom of said Court, in the City of Los Angeles at 10:00 o'clock a.m., on the 5th day of January, 1951, then and there to do, submit to and receive whatsoever the said Judge shall then and there consider in that behalf; and have you then and there this writ.

Witness the Honorable Ben Harrison, United States District Judge at Los Angeles, California, this 2nd day of January, A. D. 1951.

Edmund L. Smith, Clerk, by (S.) Murray E. Wire, Deputy Clerk. (Seal.)

United States Marshal's Return

So. District of Calif., ss:

Received the within writ the 3 day of Jan. 1951, and [fol. 47] executed same. Serving H. R. Landon by leaving Writ with Mr. H. A. Field, Room #651, Fed. Bldg., L.A.

James J. Boyle, U. S. Marshal, by (S.) Travis F. Oltman, Deputy Marshal.

Marshal's Fee $2.00.

[File endorsement omitted.]

[fol. 48] IN UNITED STATES DISTRICT COURT

RETURN TO WRIT OF HABEAS CORPUS—Filed January 4, 1951

I, Herman R. Landon, District Director of the Immigration and Naturalization Service, United States Department of Justice, Los Angeles, California, respondent herein, as and for my return to writ of habeas corpus granted in the above entitled case, respectfully state:

I

That Frank Carlson, also known as Solomon Sokolnick, hereafter referred to as the petitioner, is not being illegally restrained by respondent of his liberty, but is in respondent's custody under proper and lawful authority.

II

That the said petitioner is a native and national of Poland, born at Kosow, Galicia, Poland, on or about March 6, 1913.

III

That a warrant for the said petitioner's arrest was issued by authority of the Attorney General on October 28, 1947, charging that he was subject to deportation under the Act of October 16, 1918, as amended (8 USC 137), a certified copy of which warrant of arrest is attached hereto as a part of this return and marked Exhibit "A".

IV

That the said petitioner was taken into custody on the aforesaid warrant of arrest on November 3, 1947, and on [fol. 49] November 5, 1947, was released from custody on a delivery bond in the sum of $1,000.

V

That thereafter hearings were conducted on said warrant of arrest for the purpose of giving the petitioner an opportunity to show cause why he should not be deported, following the conclusion of which the record of hearing was forwarded to the Commissioner of Immigration and Naturalization, Washington, D. C., for decision.

VI

That the record in the case was on March 23, 1950, returned by the Acting Commissioner of Immigration and Naturalization, Washington, D. C., without decision, to the District Director of Immigration and Naturalization, Los Angeles, California, for a hearing de novo under the Administrative Procedure Act as a result of the decision of the Supreme Court in the case of *Sung v. McGrath*, 339 U.S. 33.

VII

That on September 26, 1950, the Acting Commissioner of Immigration and Naturalization, Washington, D. C., requested the District Director of Immigration and Naturalization, Los Angeles, California, to submit a report covering all aliens in the Los Angeles District who were currently active members of the Communist Party and who were under deportation proceedings on charges under the Act of October 16, 1918, as amended (8 USC 137).

[fol. 50]

VIII

That on October 6, 1950, the District Director of Immigration and Naturalization, Los Angeles, California, submitted to the Acting Commissioner of Immigration and Naturalization, Washington, D. C., a report containing summaries of facts as reflected in the confidential and official records of the Government at Los Angeles in the cases of eleven aliens indicated to be currently active members of the Communist Party, and in the cases of eight aliens indicated to be past members of the Communist Party, all of whom were the subjects of pending deportation proceedings under the Act of October 16, 1918, as amended (8 USC 137), which report recited facts tending to establish that the aforesaid petitioner was one of the said eleven currently active members of the Communist Party, some of which facts are recited in respondent's affidavit which is attached hereto as a part of this return and marked Exhibit "B".

IX

That on October 21, 1950, the following instructions were received by the District Director of Immigration and Naturalization, Los Angeles, California, by radio from the

Acting Commissioner of Immigration and Naturalization, Washington, D. C.:

> "Apprehend immediately and detain the following aliens pursuant to Section Twenty of Nineteen Seventeen Act as amended by Internal Security Act: David [fol. 51] Hyun and Harry Carlisle and Solomon Sokolnick. Also apprehend and detain all active Communists under proceedings in your district unless detention would result in severe hardship because of individual's physical condition or family situation. Give priority to those named".

X

That pursuant to the aforesaid instructions the petitioner was taken into custody on October 21, 1950, on the aforesaid warrant of arrest issued on October 28, 1947.

XI

That on October 27, 1950, the following radiogram was received by the District Director of Immigration and Naturalization, Los Angeles, California, from the Acting Commissioner of Immigration and Naturalization, at Washington, D. C.;

> "For your information and that of United States Attorneys and aliens and their attorneys the instruction to you of October twenty first to take into custody and detain the alien Communists was issued only after the cases had been examined in the light of the Internal Security Act of Nineteen Fifty and the spirit and intention thereof and all of the factors concerning the likelihood of the deportability and the activities of said alien had been given careful consideration as well as the factors of undue hardship which continued deten- [fol. 52] tion might impose Stop As you have already been instructed the hearings and steps towards disposition of these cases are to be given top priority Stop Also as you have been advised these aliens were ordered detained by authority of the Attorney General delegated to me by section nine zero point one of title eight CFR paren twelve fr five zero seven two July thirty one Nineteen Forty Seven paren under section

thirty seven of the Alien Registration Act of Nineteen Forty comma eight USC four five eight".

XII

That on October 31, 1950, while the said petitioner continued in custody under the warrant of arrest issued on October 28, 1947, a new warrant of arrest was issued by authority of the Attorney General charging that he was subject to deportation under the act of October 16, 1918 (8 USC 137) as amended by the Internal Security Act of 1950, and served upon the said petitioner, which said warrant of arrest of October 31, 1950, superseded the said warrant of arrest issued on October 28, 1947; a copy of which said warrant of arrest of October 31, 1950, is attached hereto as a part of this return and marked Exhibit "C".

XIII

That pursuant to outstanding instructions from the [fol. 53] Acting Commissioner of Immigration and Naturalization, Washington, D. C., the case of petitioner, as other deportation cases under the Act of October 16, 1918, as amended (8 USC 137), has been given first priority in expediting hearing, to the end that the said case may be disposed of as speedily as possible, but delay has been encountered from counsel for the petitioner, as recited in more detail in respondent's affidavit which is attached hereto as a part of this return and marked Exhibit "B".

XIV

That the Acting Commissioner of Immigration and Naturalization, Washington, D. C., acting for the Attorney General, has exercised the grant of statutory discretion in Section 20 of the Immigration Act of 1917 (8 USC 156), as amended by the Internal Security Act of 1950, to take the said petitioner into custody and to continue him in custody without bond pending final determination of his deportability, and in exercising said discretion to detain the said petitioner without bond the Acting Commissioner of Immigration and Naturalization, Washington, D. C., has carefully considered facts which in his judgment establish that the said petitioner is a currently active member of the Communist Party engaged in the execution of the program

of the Communist Party, the central purpose of which is to subvert the existing Government of the United States indirectly by espionage and sabotage and directly by force and violence and to substitute a totalitarian dictatorship com- [fol. 54] mitted to the destruction of individual liberty and private property; and that, moreover, said facts cause the said Acting Commissioner to believe that if the said petitioner were enlarged on bail he would engage in activities which would be prejudicial to the public interest, and would endanger the welfare and safety of the United States—which findings the said Acting Commissioner has communicated to respondent on the basis of facts which the respondent has communicated to the said Acting Commissioner, tending to establish the said petitioner's current affiliation with and activity on behalf of the Communist Party, as recited herein.

Wherefore, I, Herman R. Landon, District Director, Immigration and Naturalization Service, United States Department of Justice, pray that the writ of habeas corpus be dismissed.

(S.) Herman R. Landon, District Director Immigration & Naturalization Service, United States Department of Justice, District No. 16.

[fol. 55] EXHIBIT "A" TO RETURN

Warrant for Arrest of Alien

United States of America, Department of Justice
Philadelphia, Pa.

No. A5 634 646, 245-P-76468

To: District Director of Immigration and Naturalization, San Francisco, California

Or to any Immigrant Inspector in the service of the United States

Whereas, from evidence submitted to me, it appears that the alien Salomon Sokolnick alias Solomon Skolnick or Sol Skolnick alias Frank Carlson who entered this country at New York, New York on the 23rd day of August 1920 has been found in the United States in violation of the immi-

gration laws thereof, and is subject to be taken into custody and deported pursuant to the following provisions of law, and for the following reasons, to wit: The Act of October 16, 1918, as amended, in that he is found to have been, after entry, a member of the following class, set forth in Section 1 of said Act: An alien who is a member of and affiliated with an organization, association, society, and group that believes in, advises, advocates and teaches the overthrow, by force or violence, of the Government of the United States.

[fol. 56] I, by virtue of the power and authority vested in me by the laws of the United States, hereby command you to take into custody the said alien and grant him a hearing to enable him to show cause why he should not be deported in conformity with law. The expenses of detention, hereunder, if necessary, are authorized payable from the appropriation "Salaries and Expenses, Immigration and Naturalization Service, 1948." Authority has been granted to release under bond in the sum of ten hundred dollars, the alien named.

For so doing, this shall be your sufficient warrant.

Witness my hand and seal this 28th day of October, 1947

(S.) A. R. Mackay, Chief, Exclusion and Expulsion Section. (Seal.)

[fol. 57] EXHIBIT "B" TO RETURN

IN THE UNITED STATES OF AMERICA, SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION

STATE OF CALIFORNIA,
County of Los Angeles, ss:

Comes now Herman R. Landon, respondent herein, who states and deposes, as follows:

I. That he is District Director for the United States Immigration and Naturalization Service, Department of Justice, for the Los Angeles District, and as such is custodian of the records of the United States Immigration and Naturalization Service in said district.

II. That with respect to Solomon Szkolnick also known as Frank Carlson, the petitioner herein, the Service is in possession of evidence showing that said petitioner has

been a member of the Communist Party of the United States and has actively participated in its program; more specifically, that said petitioner has admitted membership in the Young Communist League, a Subsidiary, Branch, and Affiliate of the Communist Party of the United States; that petitioner was editor of the "Young Worker", official organ of the Young Communist League of the U.S.A.; that he was a member of the National Executive Committee of the Young Communist League; that he was the Secretary and President of the Young Communist League of California; that in 1945 he admitted membership in the Communist Party and stated that he believed in its program and [fol. 58] that he had been an active member thereof for fifteen years; that during the latter part of 1946 until about the summer of 1947, the petitioner was State Secretary of the Communist Party of the United States for the State of Wisconsin; that in 1949 petitioner caused to be published in "Our Times" (a weekend supplement of the "Daily People's World," West Coast organ of the Communist Party) an article entitled "I Demand Citizenship" in which he stated that he was a member of the Communist Party; that in September, 1949 he headed the Marxist Institute in Los Angeles; that he was present at a meeting of the Civil Rights Congress held in Los Angeles on September 4, 1950 (an organization designated by the Attorney General as Communist, F.R. 315, No. 231); that in writing for the "Daily People's World" (official West Coast organ of the Communist Party of the U.S.A.), November 10, 1950 issue, he stated among other things in an article entitled "They can't Deport You" "I told them I am a Communist"; that said petitioner is well known as an educator and leader in the Communist Party; that in connection with his deportation hearings, the petitioner refused to answer questions concerning his membership in the Communist Party on the ground of self-incrimination.

III. That the Service records show with respect to petitioner's hearings under Service Warrant of Arrest (Government's Exhibit "C") that the case was first set for hearing on November 21, 1950 and continued to November 28, 1950 on motion of petitioner's counsel. On the latter [fol. 59] date, the hearing was again continued to December 14, 1950 on motion of petitioner's counsel. On the latter date, the case was again continued on motion of peti-

tioner's counsel to January 3, 1951. On the latter date on the motion of petitioner's counsel, it was again continued to February 16, 1951.

(S.) Herman R. Landon.

Subscribed and sworn to before me this 4th day of January, 1951. Edmund L. Smith, Clerk U. S. District Court, by Michael F. Leone, Deputy Clerk. (Seal.)

[fol. 60] EXHIBIT "C" TO RETURN

Warrant

For Arrest of Alien

United States of America, Department of Justice

Los Angeles, Calif.

No. A5 634 646, 245-P-76468

To District Enforcement Officer, Los Angeles, California, or to any Immigrant Inspector in the service of the United States.

Whereas, from evidence submitted to me, it appears that the alien Salomon Sokolnick alias Solomon Skolnick or Sol Skolnick alias Frank Carlson who entered this country at New York, New York on the 23rd day of August 1920 has been found in the United States in violation of the immigration laws thereof, and is subject to be taken into custody and deported pursuant to the following provisions of law, and for the following reasons, to wit:

The Act of Oct. 16, 1918, as amended, in that he has been, after entry, a member of the following class set forth in Section 1(2)(C) of said Act: An alien who was a member of the Communist Party of the United States.

I, by virtue of the power and authority vested in me by the laws of the United States, hereby command you to take into custody the said alien and grant him a hearing to [fol. 61] enable him to show cause why he should not be deported in conformity with law. The expenses of detention, hereunder, if necessary, are authorized payable from the appropriation "Salaries and Expenses, Immigration

and Naturalization Service, 1951." Pending determination of deportability, the alien named is to be detained in custody. This warrant supersedes that issued on the 28th day of October, 1947.

For so doing, this shall be your sufficient warrant.

Witness my hand and seal this 31st day of October, 1950.

(S.) H. R. Landon, District Director. (Seal.)

[fol. 62] IN THE UNITED STATES OF AMERICA, SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION

STATE OF CALIFORNIA,
County of Los Angeles, ss.

Herman R. Landon, District Director, Immigration and Naturalization Service, Department of Justice, District No. 16, being first duly sworn, deposes and says:

That he is the person who makes the aforesaid return; that he has read the same and knows the contents thereof, and that the same is true according to the best of his knowledge and belief.

(S.) Herman R. Landon.

Subscribed and sworn to before me this 4th day of January, 1951. Edmund L. Smith, Clerk, U. S. District Court, By: (S.) Michael F. Leone, Deputy Clerk. (Seal.)

[fol. 63] ACKNOWLEDGMENT OF SERVICE

Receipt is hereby acknowledged this 4th day of January, 1951, of a copy of the Return to Writ of Habeas Corpus, in the above-entitled and numbered case.

John W. Porter, Attorney for Petitioner, By (S.) John W. Porter, by (S.) Rose S. Rosenberg.

Endorsed: Filed Jan. 4, 1951. Edmund L. Smith, Clerk, By (S.) Wm. A. White, Deputy Clerk.

[fol. 64] IN UNITED STATES DISTRICT COURT

TRAVERSE TO RETURN TO WRIT OF HABEAS CORPUS—Filed January 5, 1951

Comes now, Frank Carlson, petitioner herein, and for his traverse to the return of Herman R. Landon, District Director of the Immigration and Naturalization Service, Los Angeles, California, respondent herein, admits, denies and alleges as follows:

I

Alleges that such return in whole, including the exhibits attached thereto, and particularly paragraphs VII, VIII, IX, XI, XII, XIII and XIV thereof, and each of them, fail to set forth facts sufficient to constitute a showing responsive to the writ herein or to show why petitioner should not be released from the custody of respondent upon his bond.

II

Alleges that paragraph XIII of said return, together with the exhibit therein referred to, fails to set forth any fact responsive to said writ and purports to allege facts which are irrelevant, immaterial and incompetent to show any cause for the detention of petitioner.

III

Refers to the allegations of his petition for writ of habeas corpus on file herein as set forth in paragraphs I to XX, inclusive, and by this reference incorporates each and all of the allegations thereof as if the same were fully set forth [fol. 65] in this traverse.

IV

Admits that hearings were conducted by respondent under the warrant of arrest, Exhibit C to the return, upon the dates listed in paragraph III of Exhibit B thereto and admits that motions for continuance were made by petitioner's counsel as therein stated; and in connection therewith alleges that hearings under said warrant have been held and conducted in accordance with the usual practice of the Immigration and Naturalization Service and subject only to such necessary delays and continuances as were necessarily required for preparation and by reason of con-

flicting engagements and obligations of counsel. Petitioner further alleges that proceedings for his deportation were initiated, as shown by the petition and the return herein, on November 3, 1947, by the service of a warrant of arrest for his deportation; that the first and only hearings under said warrant were, as alleged in paragraph IV of the petition, held in June, 1949; that following the transmission of the record of said hearings to the Commissioner in Washington and the return thereof on March 23, 1950, as alleged in paragraphs V and VI of the return, hearings *de novo* under said warrant were originally noticed by respondent for July 25, 1950 and by him were continued to September 7, 1950. Petitioner is informed and believes and on the basis of such information and belief alleges that in the normal course of deportation hearings, and through no [fol. 66] fault on the part of the alien, approximately one year customarily elapses between the commencement of hearings and the issuance of a final administrative decision, following administrative appeals, by the Board of Immigration Appeals, or, where appropriate, the Attorney General; that thereafter, under the Administrative Procedure Act the alien has the right to seek review by the United States courts of any order made against him, particularly with respect to questions of law and constitutionality, and that such process of review through the District Court, Court of Appeals and petition for writ of certiorari to the Supreme Court of the United States customarily takes upwards of two years.

V

Alleges that respondent's return, together with the exhibits thereto, is not responsive to and fails to comply with the mandate of the United States Court of Appeals for the Ninth Circuit herein, and that thereby continued custody and detention of petitioner is unlawful and a denial of due process of law and of other rights secured to him by the Constitution and laws of the United States.

Wherefore, petitioner prays that he be discharged from custody forthwith upon his bond.

Margolis and McTernan, by (S.) John W. Porter,
Attorneys for Petitioner.

January 5, 1951.

[fol. 67] *Duly sworn to by Frank Carlson. Jurat omitted in printing.*

Received copy of the within Traverse to Return this 5th day of January, 1951.

(S.) Walter S. Binns, Attorney for Respondent.

[File endorsement omitted.]

[fol. 68] IN UNITED STATES DISTRICT COURT

AMENDED AFFIDAVIT—Filed January 8, 1951

(GOVERNMENT'S EXHIBIT "B")

In the United States of America, Southern District of California, Central Division

STATE OF CALIFORNIA,
County of Los Angeles, ss:

Comes now Herman R. Landon, respondent herein, who states and deposes, as follows:

I. That he is District Director for the United States Immigration and Naturalization Service, Department of Justice, for the Los Angeles District, and as such is custodian of the records of the United States Immigration and Naturalization Service in said district.

II. That with respect to Solomon Szkolnick also known as Frank Carlson, the petitioner herein, the Service is in possession of evidence showing that said petitioner has been and still is a member of the Communist Party of the United States and has and is actively participating in the execution of its program for a world-wide revolution and the establishment of a Communist totalitarian dictatorship in the countries throughout the world; more specifically, that said petitioner has admitted membership in the Young Communist League, a Subsidiary, Branch, and Affiliate of the Communist Party of the United States; that petitioner is an admitted member of the Communist Party of the U. S. A. having joined it about 1932; that petitioner was

[fol. 69] editor of the "Young Worker", official organ of the Young Communist League of the U. S. A.; that he was a member of the National Executive Committee of the Young Communist League; that he was the Secretary and President of the Young Communist League of California; that in 1945 he admitted membership in the Communist Party and stated that he believed in its program and that he had been an active member thereof for fifteen years; that during the latter part of 1946 until about the summer of 1947, the petitioner was State Secretary of the Communist Party of the United States for the State of Wisconsin; that in 1949 petitioner caused to be published in "Our Times" (a week-end supplement of the "Daily People's World", West Coast organ of the Communist Party) an article entitled "I Demand Citizenship" in which he stated that he was a member of the Communist Party; that in September, 1949 he headed the Marxist Institute in Los Angeles; that on September 4, 1950 he was present at the meeting of the Civil Rights Congress in Los Angeles, California (an organization designated by the Attorney General as Communist, F. R. 315, No. 231); that in writing for the "Daily People's World," (official West Coast organ of the Communist Party of the U. S. A.) November 10, 1950 issue, he stated among other things in an article entitled "They Can't Deport You," "I told them I am a Communist"; said issue of the "Daily People's World" is attached hereto and incorporated as part of this Exhibit; that said petitioner is presently [fol. 70] the Los Angeles County Educational Director for the Communist Party of the United States; that in connection with his deportation hearing at Los Angeles, California, on September 7, 1950 the petitioner refused to answer questions concerning his membership in the Communist Party on the grounds of self-incrimination.

III. That the Service records show with respect to petitioner's hearings under Service Warrant of Arrest (Government's Exhibit "C") that the case was first set for hearing on November 21, 1950 and continued to November 28, 1950 on motion of petitioner's counsel. On the latter date, the hearing was again continued to December 14, 1950 on motion of petitioner's counsel. On the latter date, the case was again continued on Motion of petitioner's counsel to January 3, 1951. On the latter date on the motion of peti-

tioner's counsel, it was again continued to February 16, 1951.

(S.) Herman R. Landon.

Subscribed and sworn to before me this 8th day of January, 1951. Edmund L. Smith, Clerk, U. S. District Court, by (S.) Ray E. Griffin, Deputy Clerk.

[File endorsement omitted.]

54A

Our Times

Published weekly by The Daily People's World

Vol. 13, No. 220 FRIDAY, NOVEMBER 10, 1950

JAN - 8 '51

Section EDMUND L.

READ
'THEY CAN'T DEPORT YOU'
Written from the Immigration Barracks in Los Angeles Harbor

BY RALPH IZARD

SAN FRANCISCO

MY FRIEND stood waiting impatiently for me at the gateway to New China. As I rode up to him from Portuguese Macao's frontier post, he seized my hand and exclaimed exultantly:

"Now we are in our own country—here we are free!"

Pride in freedom re-won after nearly 100 years of struggle, conscious of being at last masters in their own country and of their own destinies—these qualities shine almost visibly from the faces of nearly all the people one sees in New China.

You see it in the faces of the people in such recently liberated areas as Kwangtung, in China's extreme south. It is marked in the faces of the workers who throng the Wuhan cities on the western Yangtze. And it is most visible north of the Yellow river, the area liberated earliest, the vast region where land reform, reconstruction and increases in production have reached their highest levels.

In Peking, the powerhouse and GHQ of the Chinese revolution, this new pride, this heightening national consciousness are almost palpable forces. From Peking, too, one can see most clearly the swiftness with which China is changing.

Workers, peasants, political leaders of all parties, businessmen, factory owners and managers, engineers, regional administrators, educators, students, returning Overseas Chinese—all throng the city in an almost continuous stream, taxing its housing and food facilities. They come to Peking for the repeated meetings during which application of national policy to their particular functions is worked out in

Agricultural students at Chi Heng state farm in Hopei province, where latest farm methods are demonstrated.

'I Saw the New China'

(Editor's Note: Ralph Izard, a vet-

'THEY CAN'T DEPORT YOU'

There were 25 men in the deportation barracks. Three were progressives just rounded up under terms of the new McCarran Act. One of the latter describes the conversation that ensued

BY FRANK CARLSON

Los Angeles victims of the McCarran Act roundup of foreign-born progressives. Above: David Hyun, shown with his son, David Jr. Right: The author.

WHAT are ye in for?"

The Scotsman turned his eyes toward me and waited. The room grew quiet. The postmeal half hour of smoking and unwinding at the evening chop had run its course. Twenty-five men, using salty, descriptive phrases in half a dozen languages, had put the finishing touches to what passed for food at the Immigration Detention quarters at Terminal Island, in Los Angeles harbor.

Now they were searching for a new topic of conversation.

"What are ye in for?" the Scotsman repeated.

"Politics," I answered.

"Politics? That's a new un." His glance shifted to David Hyun and Harry Caylain. They each nodded at me, too.

"Ye gotta n'shoot," he snorted.

"No, it's the truth."

"Cut it," came a gruff voice from one of the bunks. "Where are you from, Canada?"

"From here. We live in the U.S. —right here in L. A."

"Then what's all ye doin' are?" demanded the Scotsman.

"Well," I said, "while we are all Americans and have lived here practically all our lives, we never could get our citizenship papers. Harry, here, has been in the country since 1920. He was born in England. David was born in Korea; left there in 1934. I've been here for 30 years. I was born in Poland. This is our home. Our families are here. But the Immigration Department is trying to deport us."

The Scotsman wasn't satisfied.

"Why'n ell couldn't ya get yur papers?"

"Well, in my case," I explained, "because I'm a red."

"And they're trying to deport you for that?" asked a young Englishman wearing an army uniform.

I nodded.

From a corner of the room came a loud voice with a French accent, singing "My country 'tis of thee, sweet land of liberty—"

Another voice burst in with a shout, "The land of the free, and the home of the brave." A few more followed in similar vein.

The Scotsman looked at me sternly.

rea he would still be in U.S. territory. David didn't think that was how things would end in Korea. "You don't know the Koreans," he answered.

main activity has been as a member of the Arts, Sciences & Professions Council of Southern California, for which I have lectured and delivered literary papers. I gave a [illegible] lecture for the

waiting period and, instead of receiving my citizenship papers, was confronted with a pile of "evidence" proving that I was what I told them I was.

I recalled how the examining officer pressed me to the wall to answer whether I owned any real property, and then accusingly demanded, "Why don't you own any? Don't you believe in the private ownership of property?"

I explained what was happening in the country, the war mobilization, the McCarran Act, and the efforts that labor and progressive forces are mak-

(Here follow 2 Photolithographs, side folios 71, 72)

Note:

See last two exposures of this strip and above strip for side folios 71 and 72 (54A and 54B)

[fol. 73] IN UNITED STATES DISTRICT COURT

SUPPLEMENTAL RETURN TO WRIT OF HABEAS CORPUS—Filed January 9, 1951

I, Herman R. Landon, District Director of the Immigration and Naturalization Service, United States Department of Justice, Los Angeles, California, respondent herein, herewith supplement my Return to Writ of Habeas Corpus in the above entitled matter, and in answer to petitioner's Traverse thereto filed deny and allege as follows:

I

In answer to paragraph III thereof, incorporating by reference the allegations of the petition to writ of habeas corpus heretofore filed, respondent has no information and belief as to paragraphs VIII, IX and X of said petition and therefore denies all of the allegations therein contained.

II

In answer to paragraph XVII of the petition, respondent denies that the decision to retain the respondent in custody without bail is an abuse of discretion on the part of the Attorney General of the United States; and respondent further alleges and has set forth in his Return facts and circumstances which justify the retention of respondent without bail. Respondent specifically denies that petitioner has been a law-abiding resident of the State of California and the City of Los Angeles and alleges that respondent has been a member of the Communist Party during his residence in the State of California and the City of Los Angeles, and [fol. 74] has, as such, participated in all of the illegal, subversive activities of such party.

III

In answer to paragraph XVIII of the petition, respondence denies that the pending deportation hearing will continue for many months and affirmatively alleges that such matters were set for trial immediately and would have been concluded by this time if it had not been for the refusal of petitioner to proceed to trial.

IV

Respondent denies that the deportation hearings in the Matter of Frank Carlson, also known as Solomon Skolnick, will continue for a period of one year or longer, and alleges that said hearings will proceed with due dispatch if respondent will consent to proceed to hearing instead of demanding continuous delays.

Wherefore, I, Herman R. Landon, District Director of the Immigration and Naturalization Service, United States Department of Justice, pray that the Writ of Habeas Corpus be dismissed.

(S.) Herman R. Landon, District Director Immigration & Naturalization Service United States Department of Justice District No. 16.

Dated: January 8, 1951.

[File endorsement omitted.]

[fol. 75] In United States District Court

Amended Supplemental Return to Writ of Habeas Corpus
Filed January 10, 1951

I, Herman R. Landon, District Director of the Immigration and Naturalization Service, United States Department of Justice, Los Angeles, California, respondent herein, herewith supplement my Return to Writ of Habeas Corpus in the above entitled matter, and in answer to petitioner's Traverse thereto filed deny and allege as follows:

I

In answer to paragraph III thereof, incorporating by reference the allegations of the petition to writ of habeas corpus heretofore filed, respondent has no information and belief as to paragraphs VIII, IX and X of said petition and therefore denies all of the allegations therein contained.

II

In answer to paragraph XVII of the petition, respondent denies that the decision to retain the respondent in custody without bail is an abuse of discretion on the part of the Attorney General of the United States; and respondent

further alleges and has set forth in his Return facts and circumstances which justify the retention of respondent without bail. Respondent specifically denies that petitioner has been a law-abiding resident of the State of California and the City of Los Angeles and alleges that respondent has been a member of the Communist Party during his residence in the State of California and the City of Los Angeles and [fol. 76] has, as such, participated in all of the illegal, subversive activities of such Party.

III

In answer to paragraph XVIII of the petition, respondent denies that the pending deportation hearing will continue for many months and affirmatively alleges that such matters were set for trial immediately and would have been concluded by this time if it had not been for the refusal of petitioner to proceed to trial.

IV

In answer to paragraph 18(a) of Petitioner's Supplemental Petition, respondent denies all of the allegations therein contained.

V

Respondent denies that the deportation hearings In the Matter of Frank Carlson, also known as Solomon Skolnick, will continue for a period of one year or longer, and alleges that said hearings will proceed with due dispatch if respondent will consent to proceed to hearing instead of demanding continuous delays.

Wherefore, I, Herman R. Landon, District Director of the Immigration and Naturalization Service, United States Department of Justice, pray that the Writ of Habeas Corpus be dismissed.

(S.) Herman R. Landon, District Director Immigra-
[fol. 77] tion and Naturalization Service United States Department of Justice District No. 16.

Dated: January , 1951.

Subscribed and sworn to before me this 10th day of January, 1951. Edmund L. Smith, Clerk, U. S. District Court, by Ray E. Griffin, Deputy Clerk.

[File endorsement omitted.]

[fol. 78] IN UNITED STATES DISTRICT COURT

MINUTE ENTRIES OF TRIAL

At a stated term, to wit: The September Term, A.D. 1950, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Thursday the 11th day of January in the year of our Lord one thousand nine hundred and fifty-one.

Present: The Honorable Ben Harrison, District Judge.

In re Frank Carlson, aka Solomon Skolnick, No. 12491-BH Civil.

In re Miriam Christine Stevenson, etc., No. 12492-BH Civil.

In re Harry Carlisle, aka Harry Carlyle, No. 12503-BH Civil.

In re David Hyun, No. 12505-BH Civil.

For further hearing on Return of Writ; John W. Porter, Esq., appearing as counsel for Frank Carlson, petitioner in case No. 12491-BH; Rose S. Rosenberg, Att'y, appearing as counsel for Miriam Christine Stevenson, petitioner in Case No. 12492-BH; Stanley Fleishman, Esq., appearing as counsel for Harry Carlisle, petitioner in case No. 12503-BH; Milton S. Tyre, Esq., appearing as counsel for David Hyun, petitioner in Case No. 12505-BH; Walter S. Binns, Ass't U. S. Att'y, appearing as counsel for respondent; all four said petitioners being present;

Court makes a statement relative to the delay of the hearings of the deportation proceedings pending before the Immigration Service. Attorney Porter makes a statement of objections on behalf of Petitioner Carlson to the taking herein of evidence relative to the deportation hearings. Attorneys Rosenberg, Fleishman, and Tyre, on behalf of the respective petitioners for whom they appear, state [fol. 79] that they join in the objections made on behalf of Petitioner Carlson.

The Court thereupon directs that the hearing officers be called to the stand, and thereupon

John B. Bartus and Roy Waddell, respectively, are called, sworn, and testify relative to the hearings in the deportation proceedings.

The Court makes a further statement and states that the burden now shifts to the aliens, petitioners herein, to establish by competent evidence the allegations of their petitions wherein it is stated that the action of the Attorney General in detaining them without bail is arbitrary and capricious. The Court states that it now offers an opportunity to each of the petitioners to take the stand in their own behalf.

Attorney Porter makes a statement that he submits the petition of Carlson on the present state of the record. The Court calls Petitioner Carlson to the stand, and his counsel objects thereto. Petitioner Carlson states that he desires to follow the advice of his counsel and not testify herein.

Attorney Rosenberg states that she takes the same position respecting the petitioner Stevenson, as counsel for petitioner Carlson. The Court inquires of Petitioner Stevenson if she desires to take the stand and the petitioner says that she takes the advice of her counsel not to testify.

[fol. 80] Attorney Fleishman for Petitioner Carlisle states that he takes the same position as counsel for Petitioner Carlson. The Court inquires of Petitioner Carlisle if he desires to take the stand, and Carlisle states that he desires to follow the advice of his counsel and not testify herein.

Attorney Tyre makes a statement of objections to respondent filing a supplemental return in the David Hyun matter, and moves that the said supplemental return be stricken. The Court denies said motion to strike said supplemental return.

At the request of Attorney Tyre, Court at hour of 2:40 PM recesses.

At 2:57 p.m. court reconvenes herein and all being present as before, including all four petitioners and counsel for both sides;

Attorney Tyre makes a statement to the Court that Petitioner Hyun does not desire to testify herein. In answer to the Court's question Petitioner Hyun states that on advice of his counsel he does not desire to testify herein.

Counsel for each of the petitioners states to the Court that the matter is submitted on the record in this proceeding.

The Court makes a statement of its decision in each of these matters, and directs counsel for the respondent in each case to prepare and present form of written order for signature, that the petition for Writ of Habeas Corpus is dismissed, and that the Writ of Habeas Corpus issued [fol. 81] herein is discharged.

Attorney Porter moves that the Court fix bail pending appeal in the Carlson case. The Court makes a statement that it will not grant bail pending appeal in any of these cases.

Attorney Fleishman makes a statement relative to the condition of the health of Petitioner Carlisle, and presents two affidavits, which are filed herein, and requests that bail be fixed pending appeal. Attorney Binns makes a statement and presents letter dated Jan. 8, 1951, from F. C. Stewart, Medical Director, Public Health Service, which is filed herein.

The Court makes a further statement relative to an examination of Petitioner Carlisle and report to the Court by an independent medical doctor. Attorney Fleishman states that he desires such an examination and report.

The Court states that it denies the motions for fixing of bail as to Petitioners Carlson, Stevenson and Hyun, but that as to Petitioner Carlisle the application for fixing of bail pending appeal will now be taken under submission, and directs counsel to confer relative to a doctor to make an examination of Petitioner Carlisle and report to the Court.

Attorney Rosenberg makes further statement to the Court on behalf of Petitioner Stevenson in support of release on bail pending appeal.

The Court and Attorneys Porter and Fleishman make further statements.

[fol. 82] IN UNITED STATES DISTRICT COURT

FINDINGS OF FACT AND CONCLUSIONS OF LAW—Filed January 22, 1951

The above matter having come on for hearing upon the writ of habeas corpus on the 9th day of January 1951, at 2:00 P.M., and on the 11th day of January 1951 at 2:00 P.M., before the Honorable Ben Harrison, Judge Presiding,

Margolis and McTernan by John W. Porter appearing as attorneys for petitioner, and Ernest A. Tolin, United States Attorney, by Walter S. Binns, Chief Assistant, appearing as attorneys for respondent Herman R. Landon, District Director of Immigration and Naturalization Service, and said respondent having filed his Return to the Writ of Habeas Corpus, and petitioner having filed his Traverse to said Return, and respondent having filed his Supplemental Return and an Amendment thereto, and the Court having heard oral argument and considered the Affidavit filed by respondent together with the Return, and having taken evidence as to the progress of the deportation hearings being considered before a hearing officer of the Immigration and Naturalization Service, and petitioner not desiring to submit evidence, the Court makes its findings of fact and conclusions of law.

Findings of Fact

I

That Frank Carlson, also known as Solomon Skolnick, is an alien and a native and national of Poland, born at Kosow, Galicia, Poland, on March 6, 1913.

[fol. 83]

II

That said petitioner was taken into custody on November 3, 1947, on a warrant of arrest issued by authority of the Attorney General on October 28, 1947, and was released from custody on a bond in the amount of $1,000.

III

That after a hearing on said warrant of arrest, a hearing de novo under the Administrative Procedure Act was ordered as a result of the decision of the Supreme Court in the case of *Sung v. McGrath*, 339 U. S. 33.

IV

That on September 26, 1950, the Acting Commissioner of Immigration and Naturalization, Washington, D. C., requested the District Director of Immigration and Natural-

[illegible] the city in an almost continuous stream, taxing its housing and food facilities. They come to Peking for the repeated meetings during which application of national policy to their particular functions is worked out in long discussions.

Indeed, the excuse heard most often for inability to keep personal appointments in China today is:

Very many meetings!"

All these meetings are aimed at the goal for the next two years that has been most clearly defined by Mao Tse-tung, chairman of the Central people's Government. With characteristic simplicity and penetration, Mao defined this goal in words understandable to all:

"We are struggling to increase production in order that within the next two years all the people of China may be well-fed and well-clothed."

WHILE pride in New China is limited to no one group or class, it is perhaps most apparent among two groups. The first of these are members of the People's Liberation Army, veterans all, who are deeply conscious of the role they played in winning China for the people. There's a popular saying in China that is in itself a tribute to the PLA and to the veterans of 17 to 22 years in age who comprise its ranks. The saying is:

"No Liberation Army, no New China."

Veterans of years of fighting to free China from the heritage of feudalism that imperialist power maintained for so long, rode with us on the completely restored railway from Canton to the Wuhan cities on the Yangtze, and from the other side of the Yangtze to Peking. There were soldiers of 20 who had fought for five years, and "aged" veterans of 24 who counted their service back into the anti-Japanese war.

Our train was itself a microcosm of New China. Aboard were businessmen and trade union leaders, students returning to China from years of study in the French university at Saigon, most of the staff of the former Kuomintang legation in Paris, Chinese who had lived overseas for years. Among the latter was a man of 84 who had lived for 70 years in the United States.

One felt the new pride in being Chinese among all of them, but most markedly among the veterans. All of these youngsters carried some sort of weapon, but not all these arms were stamped "Made in USA." Some soldiers carried Mauser pistols, others Japanese rifles. Most of their weapons, however, were U.S. made.

It was for this reason that Chiang Kai-shek was called "the quartermaster general," and his armies the quartermaster corps of the PLA. And few vehicles in government and army service today are other than U.S. made—trucks, motorcycles, jeeps, passenger cars, all are the familiar Detroit product, many of them late models. The jeep all-metal station wagon which took me from the Macao frontier to Chung San in Kwangtung province rolled off the assembly line in 1948.

PLA pride in the New China they have done so much to create is matched by the veterans' pride in their weapons and other equipment. Even with no inspection coming up, the PLA veteran's first care is his rifle or revolver. Vehicle drivers spend their idle time while on assignments taking care of their cars and trucks, tinkering with the engines, polishing the bodies, making minor adjustments.

MATCHING the pride of these PLA veterans in New China is that of the peasants who gave their sons to this superb army of the people. But the peasants now have an added reason for pride.

North of the Yellow river, peasants who were once sharecroppers, day laborers or sowing and harvest hands, now till their own soil. The effects of land reform on the national food supply of New China can be seen most clearly in the way threatened famine was dealt with during the past summer. Surplus stocks of grains were shipped to the threatened areas by rail, with an efficiency remarkable to old China residents.

That this was possible is testimony also to the success of the land reform program in the area it has been longest in effect—Northwest province (Manchuria). The 1948 total agricultural production was 18 million tons. This jumped to 18 million tons in 1949, after land reform. The Peking People's Daily has said of this great national undertaking:

"The nation-wide agrarian reform is greater in scope not only than anything known in Chinese history, but also than anything comparable in the history of world revolution."

Following the same course southward as was taken by the PLA in freeing China from the weight of 100 years of imperialist rule, frozen feudal relations and colonial status, land reform was scheduled for completion in all of China by 1953. The struggle to carry it through, said The People's Daily, "will be the fiercest struggle which the Chinese people have had to wage against the remnants of the feudal system since victory on the military fronts. Victory in this war will, in fact, put an end to the semi-feudal character of Chinese society."

BEFORE June 25 the vast and sweeping land reform program of New China had been scheduled for completion in the spring of 1953. But now, in the face of events in Korea, this program may be speeded up to the full extent possible within the farming seasons.

Earlier in June, Liu Shao-ch'i, vice chairman of the Central People's Government, delivered a long and important address on land reform before the second session of the People's Political Consultative Conference. The PPCC is the provisional national congress of New China.

Completion of the land reform program, Liu told PPCC delegates, would constitute "an extremely great historical victory for the Chinese people." It would abolish as a class China's landlords, who, south of the Yellow river, yet "possess approximately from 70 to 80 percent of the land and brutally exploit the peasants by means of this land."

The ultimate aim of the program, Liu said, is to transform "the land ownership system of feudal exploitation . . . into a system of peasant land ownership."

But events are moving so swiftly in New China that there has been a sharp divergence from the practices of even two years ago in the transformation of the Chinese land system. Two years ago, with the liberation war in full flood, Liu said, "the revolutionary war required that the peasants pay dearly (with fighters, public grain and labor duty) to support the war and strive for victory."

Under such harsh necessities, Liu said, "we allowed the peasants to requisition the surplus land and property of the rich peasants and also to confiscate all the property of the landlords."

Since the victory of the People's Liberation Army, however, "the two great tasks required of the peasants—military service and public labor—have come to an end . . . The great revolutionary unity of all nationalities, all democratic classes, parties and groups and people's organizations throughout the country has already been established politically and organizationally, and the political attitude of the rich peasants, in general, has also undergone a change."

At the present stage of the Chinese revolution, Liu said, the aim is to preserve the "rich peasant economy" of

(Continued on Page Seven)

(Editor's Note: Ralph Izard, a veteran journalist and long a close observer of events in Asia, has just returned to the United States from a trip to East Asia which included a three-month stay in New China. The accompanying article is the first in a series of on-the-scene reports, written especially for Our Times and The Daily People's World. The series will be continued in The Daily People's World of Monday, Nov. 12).

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land of liberty—"

Another voice burst in with a shout, "The land of the free, and the home of the brave." A few more followed in similar vein.

The Scotsman looked at me sternly. His new-born black beard bristled. Then, with the finality of a judge pronouncing sentence, he boomed:

"They can't do it to yu, lad. They'll never git away wit it."

The others voiced their agreement, in French, German, Spanish and "limey" English.

I agreed 100 percent. They can't get away with it!

Then it came pouring out. One after another the men gave vent to the "goodwill towards America" that the Marshall Plan, the Voice of America and Coca Cola have sown in Europe. What a harvest!

THE majority in the room were waiting impatiently to get deported. Seamen who had overstayed their time, a few illegal entries—all had had their fill of U.S. hospitality to foreigners. They wanted out. Several swore never to set foot on U.S. soil again.

Harry, David and I found ourselves on the defensive. "The country isn't as bad as all that." "Don't blame the people." "The man on the street does not want to swallow you up." "Americans want peace, too," etc., etc.

"Ya sound like a bunch of Yankees," came the reproach.

"We are," I answered.

The men wanted to know more about us. David started off.

He told them that he was a draftsman. He left Korea in 1926, lived in the Hawaiian Islands until 1947, when he came to California. He volunteered for the Army during World War II, but was not accepted since Korea was enemy territory. He did next best—air warden and civilian defense. While in Hawaii, he was president of his union local and continued his union activity here as a member of Local 9, United Office & Professional Workers.

Yes, he was married, to an American born citizen. They have two small children. He didn't like to see people pushed around and had become an active member of the Civil Rights Congress. Sure he liked the U.S.—he did not intend to leave.

Someone quipped that if sent to Korea he would still be in U.S. territory. David didn't think that was how things would end in Korea. "You don't know the Koreans," he answered.

A TALL statuesque Negro from the British West Indies was engaging Harry in conversation. Others in the room were listening, drawing closer.

"Of course I don't feel like an alien," Harry said. "Nor do I consider myself deportable. I came here from England more than 30 years ago. One builds a considerable life, develops family and other social relations, and absorbs much surrounding culture in three decades, so that if I were sent back to England, forcibly separated from relations embracing three generations of American citizens, I would for some time be more alien there than I am here.

"Why do they want to deport me? First, disregard the headlines about 'dangerous reds' and the manufactured aliases which imply sinister purposes. Such nonsense is deliberately calculated to fool the American people as to who we are and what we stand for.

"I have fought for the rights of labor, the maintenance of peace, and the creation of plenty for all mankind during most of my adult life. I learned the need for a new society, without war or economic crisis or colonial subjection of people, while working in English coal mines—long before there was a Bolshevik 'menace.' I am no conspirator. I am not undermining the Constitution. Those that put me here are doing that.

"What's that? They say I'm a writer and organizer for the Communist party?

"I suppose they refer to the fact that I have edited or contributed articles and stories to various labor and progressive publications, and I edited the works of Mike Quin, a well-loved columnist and feature writer for The Daily People's World, after he died of cancer in 1948.

● "But I have also worked on the docks, as a janitor, a sales manager, and have written for motion pictures as publicist and scenarist.

"As for organizer, I did organize writers' groups. In recent years my main activity has been as a member of the Arts, Sciences & Professions Council of Southern California, for which I have lectured and delivered literary papers. I am a staff lecturer for the Actors Laboratory Theater, as a specialist in the social background of dramatic literature.

"Obviously, I have been subject for many, many years to the same "charge" which, when stripped of the lies and blatant misrepresentation, I admit to with pride.

"I have fought for the rights of man, and threats of deportation are not going to halt that fight."

There was a pause.

"Yur quite a man, 'Arry," Scotty said approvingly.

THE men looked at me. It was my turn.

"Me? I'm the red menace," I told them. "I'm a Communist.

"When I was five Stalin got hold of me somewhere in Poland, put me through a one-year school for conspirators and shipped me over here to undermine the U.S. government. It took them 30 years here to catch up with me, but they finally caught me red-handed with a copy of The People's World in my possession and landed me. That's it."

The men grinned appreciatively and waited. They were intently serious. They wanted it straight.

I told them how more than 20 years ago, while still in high school, I had my first lesson in force and violence. I saw my brother beaten and bleeding as New York's finest smashed a picket line of striking furriers. That led me to look for an avenue to fight this force and violence. I found the answer in the Communist party.

I traced some of the struggles of the past 20 years and outlined the role that the Communist party played in them, and my small contribution to the fight. I told them of my activities as an organizer for the ILWU, my record during the war years, my efforts to secure citizenship.

I couldn't resist describing the scene at the Immigration Offices in San Francisco when I was called in at the end of the prescribed two-year

I explained what was happening in the country, the war mobilization, the McCarran Act, and the efforts that labor and progressive forces are making to stem the drive toward war and fascism. I gave assurance that repressive measures would not stop the U.S. working people—that the fight would go on and that I intended to continue to be part of it.

When I stopped for breath, a young Belgian, in broken English, told me:

"I hope you men can stay. We in Europe would feel safer if there were more Americans like you."

A fog horn sounded outside and the men ran to the windows. The conversation turned to ships. But it returned again and again to the "Yankees" who were going to be deported.

TWO NIGHTS ago, after a lengthy discussion, a unanimous vote was taken in our barracks to demand more bread with our meals. When the proposal was made that I write out the request to the officer in charge, a young Canadian seaman objected.

"Let's not put these fellows on the spot," he insisted. "I'll write it."

When one fellow remarked that in asking for bread we were voicing the cry of the whole world, a Hungarian muttered, "No, not the whole world."

Then, when the guard was handed the demand, he warned against any demonstration and threatened to send us all to the county jail. Then he shouted, "The reason you can't get more bread is because we're shipping it all to your countries in Europe."

An hour later he returned to inform us we'll get all the bread we want.

Last night the young Belgian (a jet pilot who had refused to re-enlist in the U.S. Air Force for fighting in Korea) wrote out the words of La Marseillaise in French and gave it to David, the Korean American, to paste up alongside his bunk.

"It's a little of the United Nations here, and it works," someone remarked.

"God bless ye, lads," the Scotsman said as we left for the court hearing. "God bless ye."

ization, Los Angeles, California, to submit a report covering all aliens in the Los Angeles District who were currently active members of the Communist Party and who were under deportation proceedings.

V

That on October 6, 1950, the respondent submitted to the Acting Commissioner a report containing summaries of facts as reflected in the confidential and official records of the Government at Los Angeles in the cases of eleven aliens who were currently active members of the Communist Party, and in the cases of eight aliens indicated to be past members of the Communist Party.

[fol. 84]

VI

That on October 21, 1950, the respondent received a radiogram from the Acting Commissioner of Immigration and Naturalization, Washington, D. C., directing him to apprehend and detain petitioner Frank Carlson, also known as Solomon Skolnick, among others. Therefore petitioner was re-arrested.

VII

That on October 31, 1950, a new warrant of arrest was issued by authority of the Attorney General charging that petitioner was subject to deportation as a person who had been, after entry into the United States, a member of the Communist Party. That pursuant to said instructions from the Attorney General, deportation hearings in petitioner's case were held on November 21, 1950, and continued to November 28, 1950; on the latter date the hearing was again continued to December 14, 1950; on the latter date the case was again continued to January 3, 1951; and on the latter date, it was again continued to February 15, 1951, all at the request of the petitioner's attorney.

VIII

That the Acting Commissioner of Immigration was in possession of evidence that said petitioner has been and still is a member of the Communist Party of the United States,

which evidence is set forth in the affidavit filed by respondent as follows:

"That with respect to Solomon Szkolnick also known [fol. 85] as Frank Carlson, the petitioner herein, the Service is in possession of evidence showing that said petitioner has been and still is a member of the Communist Party of the United States and has and is actively participating in the execution of its program for a world-wide revolution and the establishment of a Communist totalitarian dictatorship in the countries throughout the world; more specifically, that said petitioner has admitted membership in the Young Communist League, a subsidiary, Branch, and Affiliate of the Communist Party of the United States; that petitioner is an admitted member of the Communist Party of the U. S. A. having joined it about 1932; that petitioner was editor of the "Young Worker", official organ of the Young Communist League of the U. S. A.; that he was a member of the National Executive Committee of the Young Communist League; that he was the Secretary and President of the Young Communist League of California; that in 1945 he admitted membership in the Communist Party and stated that he believed in its program and that he had been an active member thereof for fifteen years; that during the latter part of 1946 until about the summer of 1947, the petitioner was State Secretary of the Communist Party of the United States for the State of Wisconsin; that in 1949 petitioner caused to be published in "Our Times" [fol. 86] (a weekend supplement of the "Daily People's World", West Coast organ of the Communist Party) an article entitled "I Demand Citizenship" in which he stated that he was a member of the Communist Party; that in September 1949 he headed the Marxist Institute in Los Angeles; that on September 4, 1950 he was present at the meeting of the Civil Rights Congress in Los Angeles, California, (an organization designated by the Attorney General as Communist, F. R. 315, No. 231); that in writing for the "Daily People's World", (official West Coast organ of the Communist Party of the U. S. A.), November 10, 1950

issue, he stated among other things in an article entitled "They Can't Deport You," "I Told them I am a Communist"; said issue of the "Daily People's World" is attached hereto and incorporated as part of this Exhibit; that said petitioner is presently the Los Angeles County Educational Director for the Communist Party of the United States; that in connection with his deportation hearing at Los Angeles, California, on September 7, 1950 the petitioner refused to answer questions concerning his membership in the Communist Party on the grounds of self-incrimination."

IX

The Court takes judicial notice that a state of emergency exists and that an undeclared war is being waged in Korea [fol. 87] between the Armed Forces of the United States and the armed forces of Communist China.

CONCLUSIONS OF LAW

I

The Attorney General, through the Immigration and Naturalization Service, has exercised discretion in determining that petitioner Frank Carlson, also known as Solomon Skolnick, be retained in custody pending deportation.

II

The retention of Frank Carlson, also known as Solomon Skolnick, in custody pending deportation was not arbitrary or capricious.

III

There is substantial evidence to support the decision of the Attorney General, acting through the Immigration and Naturalization Service, to retain petitioner Frank Carlson, also known as Solomon Skolnick, in custody.

IV

Petitioner is not being illegally restrained by respondent but is in custody of respondent under proper and lawful order.

V

The Writ of Habeas Corpus is and should be discharged and dismissed.

(S.) Ben Harrison, United States District Judge.

Dated: January 22, 1951.

[fol 88] Approved as to form: Margolis and McTernan, by — ———, Attorneys for Petitioner.

[File endorsement omitted.]

[fol. 89] IN THE UNITED STATES DISTRICT COURT IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION

No. 12491-BH

In the Matter of FRANK CARLSON Also Known as Solomon Skolnick, Petitioner for Writ of Habeas Corpus

ORDER DISMISSING PETITION FOR WRIT OF HABEAS CORPUS AND DISCHARGING WRIT—January 22, 1951

The mandate of the Circuit Court of Appeals for the Ninth Circuit was spread in the District Court on December 27, 1950. The Court thereupon, in accordance with the mandate, ordered the issuance of writ of Habeas Corpus directed to Herman R. Landon, District Director of the Immigration and Naturalization Service, United States Department of Justice, Los Angeles, California, and set January 5, 1951 as the return date on the said writ. On said date the Court set the matter for hearing on January 9, 1951, the petitioner being represented by his counsel Margolis and McTernan, by John W. Porter, and the respondent by his counsel Ernest A. Tolin, United States Attorney, appearing by Walter S. Binns, Chief Assistant United States Attorney, and the Court having read the Return and the Traverse on file and the Supplemental Return, and having read and considered the Affidavit filed by respondent in addition to the Return and heard arguments, and further proceedings being had January 11, 1951, and the Court having taken evidence as to the progress of the

deportation hearing against Frank Carlson, also known [fol. 90] as Solomon Skolnick, before a hearing officer of the Immigration and Naturalization Service;

And the petitioner personally and by his attorney not desiring to submit evidence;

It is hereby ordered, adjudged and decreed that the petition for writ of habeas corpus herein is dismissed and the Writ of Habeas Corpus issued herein be and hereby is discharged, and the petitioner is remanded to the custody of the Immigration and Naturalization Service of the Department of Justice.

Dated: January 22, 1951.

(S.) Ben Harrison, United States District Judge.

Approved as to form: Margolis and McTernan, by ——, Attorneys for Petitioner.

[File endorsement omitted.]

[fol. 91] IN UNITED STATES DISTRICT COURT

NOTICE OF APPEAL—Filed January 22, 1951

Notice is hereby given that Frank Carlson, the petitioner above named, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the order discharging the writ of habeas corpus and denying the petition for a writ of habeas corpus herein, made and entered in this action by the United States District Court, Honorable Ben Harrison, Judge presiding, on the 22nd day of January, 1951.

Dated this 22nd day of January 1951.

Margolis and McTernan, by (S.) John W. Porter, Attorneys for Petitioner.

(Affidavit of service by Mail.)

[File endorsement omitted.]

[fol. 92] IN UNITED STATES DISTRICT COURT

STIPULATION AS TO SUPPLEMENTAL RECORD ON APPEAL—Filed January 23, 1951

It is hereby stipulated by and between the undersigned counsel for the petitioner-appellant and for the respondent-appellee herein that the following documents and papers shall constitute the supplemental record on appeal to the United States Court of Appeals for the Ninth Circuit herein:

1. The Writ of Habeas Corpus issued herein on or about January 2, 1951.
2. The Return to Writ of Habeas Corpus of H. R. Landon, respondent herein, together with exhibits attached thereto, executed January 4, 1951.
3. The Traverse to Return to Writ of Habeas Corpus dated January 5, 1951.
4. The Supplemental Return to Writ of Habeas Corpus, together with Amended Affidavit of H. R. Landon attached thereto as Exhibit B.
5. The Amended Supplemental Return to Writ of Habeas Corpus.
6. Reporter's transcript.
7. Minute Order discharging writ and denying petition, entered January —, 1951.
8. Minute order denying application for bail pending appeal, entered January —, 1951.
9. Findings of Fact and Conclusions of Law entered [fol. 93] January 22, 1951.
10. Order discharging writ and denying petition, entered January 22, 1951.
11. Notice of Appeal dated January 22, 1951.
12. This stipulation.

Dated this 23rd day of January, 1951.

Margolis and McTernan, by (S.) John W. Porter, Attorneys for Petitioner-appellant. Ernest A. Tolin, United States Attorney, (S.) Walter S. Binns, Chief Assistant U. S. Attorney, Attorneys for Respondent-Appellee.

[File endorsement omitted.]

[fols. 94-98] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 99] IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION

No. 12492-BH

In re MIRIAM CHRISTINE STEVENSON, Formerly Burroughs, nee Kenkel, Alias Miki Ashton

PETITION FOR WRIT OF HABEAS CORPUS—Filed November 2, 1950

Comes now Rose S. Rosenberg, as attorney for Miriam Christine Stevenson, formerly Burroughs, nee Kenkel, alias Miki Ashton, and petitions this Honorable Court for a writ of habeas corpus directing the District Director of the Immigration and Naturalization Service at Los Angeles to produce the said Miriam Christine Stevenson before this Court on a date and at a time to be set by this Court, and then and there to show cause why the said Miriam Christine Stevenson should not be released from custody upon her bond; and in support thereof petitioner alleges as follows:

I

On or about July 8, 1949, the Attorney General caused to be issued, and on or about July 26, 1949, to be served upon said Miriam Christine Stevenson, a warrant for her arrest, charging in substance that the said Miriam Christine Stevenson was an alien found to be in the United States in violation of the immigration laws thereof, in that at the time of her entry she was an immigrant not in possession of a valid immigration visa and not exempted from the [fol. 100] presentation thereof in violation of the Immigration Act of May 28, 1924; and that she was after entry an alien who is a member of an organization, society, or group that advises, advocates, or teaches the overthrow by force or violence of the government of the United States in violation of the Act of October 16, 1918 as amended; and that she is an alien who is a member of an organization, association, society or group that writes, circulates, distributes, prints, publishes, or displays any written or

printed matter advising, advocating or teaching the overthrow, by force or violence, of the government of the United States, in violation of the Act of October 16, 1918, as amended.

II

That said warrant on its face authorized the release of said Miriam Christine Stevenson under bond in the sum of Two Thousand Dollars ($2,000.00), and that following her said arrest under said warrant said Miriam Christine Stevenson was released upon posting bond in such amount.

III

That at all times since on or about July 26, 1949, said Miriam Christine Stevenson was at liberty under bond.

IV

That at all times when said Miriam Christine Stevenson was duly ordered by the District Director of the Immigration and Naturalization Service for the Los Angeles District to appear at hearings upon said warrant said Miriam Christine Stevenson did in fact appear for such hearings.

[fol. 101]

V

That thereafter, in or about the month of February, 1950, the said hearings and proceedings against said Miriam Christine Stevenson were in substance and effect held to be void by the decision of the United States Supreme Court in the case of *Sung* v. *McGrath* (339 U.S. 33), and by virtue thereof, new hearings under said warrant of arrest were required. That pursuant to the new regulations a hearing was scheduled for September 27, 1950, but by written notice from the District Director of the Immigration and Naturalization Service said case was taken off calendar until such time as said District Director should set a new date for said hearing; that since September 21, 1950, said Miriam Christine Stevenson and your petitioner as counsel have not been notified of said hearing nor of the date when such hearing would be resumed. That at all times from September 21, 1950, to date, said Miriam Christine Stevenson has been available, ready and willing to appear and attend at such hearing or at any other lawful proceeding under said warrant of arrest.

VI

That said Miriam Christine Stevenson was born in London, England in 1907; in 1919, at the age of twelve, said Miriam Christine Stevenson was taken by her family consisting of a stepfather, mother and sister to Canada where she resided with her family until 1923; that sometime in 1923, accompanying her mother, stepfather and sister, said Miriam Christine Stevenson entered into the United States at Noyes, Minnesota, a port of entry; that sometime in 1928 [fol. 102] Miriam Christine Stevenson moved to California and has at all times since been, and now is, a resident of the State of California and of the City of Los Angeles for approximately the past 24 years. That the sole occasions on which said Miriam Christine Stevenson has departed from the United States was in October, 1928, when said Miriam Chirstine Stevenson in the company of her mother, stepfather and sister crossed the border into Canada remaining there for a visit of several hours, reentering the United States on the same day at Blaine, Washington, a port of entry. That on or about December 23, 1928, for a period of approximately twenty-four hours, during which time said Miriam Christine Stevenson went to Tijuana, Mexico and there said Miriam Christine Stevenson was married to a citizen of the United States. That said Miriam Christine Stevenson reentered the United States on or about December 25, 1928, at Ysidro, California.

IX

That your petitioner is informed and believes and upon such information and belief alleges that sometime in 1929 said Miriam Christine Stevenson made inquiry of the Naturalization and Immigration Service regarding her status pursuant to filing a notice of intention to apply for United States citizenship and said Miriam Christine Stevenson did in fact fill in said form, but did not file same for the reason that said Miriam Christine Stevenson was informed that no [fol. 103] trace of a visa issued in the name of Miriam Kenkel, the maiden name of Miriam Christine Stevenson, could be found; that a visa in the name of her stepfather was found and a record of a head tax having been paid by him sometime in 1923, the date of entry, at Noyes, Minnesota, was on file; that, therefore, said notice of intention to apply for

United States citizenship by said Miriam Christine Stevenson could not be received. That said Miriam Christine Stevenson was until said notice of intention was refused, wholly unaware that her entry into the United States in 1923 was illegal, by reason of no proper visa having been issued to her. That said Miriam Christine Stevenson was unable, for purposes of establishing a legal entry into the United States, to leave the United States for a period of at least six months and thereafter to re-enter under a proper visa for the following reasons:

(1) She was unable to incur the financial burden such a plan would necessitate.

(2) She was by then already married to a citizen of the United States, and at the time hereinabove indicated, was pregnant with a child; that the risk involved to the husband of said Miriam Christine Stevenson of seeking and finding a job in another country, was too precarious;

(3) That the said Miriam Christine Stevenson was at the time in question financially aiding her mother and sister who had departed for Canada and were there residing for purposes of making a legal re-entry into the United States, [fol. 104] which legal entry into the United States both mother and sister of said Miriam Christine Stevenson did eventually effectuate; and to both of whom, after proper application for citizenship and hearings thereon, certificates of citizenship of the United States were in fact issued.

X

That said Miriam Christine Stevenson is now married to a native-born citizen, and is the mother of one child, age nineteen years, who was born in the United States.

XI

That on Tuesday, October 24, 1950, said Miriam Christine Stevenson was arrested by agents of the District Director of the Immigration and Naturalization Service at Los Angeles, taken into custody and lodged in the County Jail of Los Angeles County. That at the time of such arrest said Miriam Christine Stevenson was informed by said agents that the bond of Two Thousand Dollars ($2,000.00) under which she had been at liberty since July 26, 1949, had been revoked.

XII

That on October 26, 1950, petitioner on behalf of Miriam Christine Stevenson filed in this Court a petition for writ of habeas corpus, alleging all of the foregoing facts. That pursuant to said petition this Court on said date issued its Order to Show Cause, directing said H. R. Landon as District Director of the Immigration and Naturalization to appear before this Court on October 30, 1950, and then and [fol. 105] there to show cause, if any he might have, why said Miriam Christine Stevenson should not be released from custody upon her bond.

XIII

That on October 30 and 31, 1950, hearings were had before the Honorable Ben Harrison, Judge of this Court. That at the conclusion of such hearing on October 31, 1950, and while said Miriam Christine Stevenson remained in custody, said District Director caused to be served upon said Miriam Christine Stevenson a warrant of arrest dated October 31, 1950, alleging in substance that said Miriam Christine Stevenson has been found in the United States in violation of the immigration laws and is subject to deportation thereunder in that she has been after entry an alien who was a member of the Communist Party of the United States, in violation of section 1(2)(C) of the Act of October 16, 1918, as amended. That said warrant further recited, "Pending determination of deportability, the alien named is to be continued in custody. This warrant supersedes that issued on the 8th day of July, 1949."

XIV

That by virtue of the issuance and service of said warrant on October 31, 1950, the petition for a writ of habeas corpus filed on behalf of said Miriam Christine Stevenson October 26, 1950, as aforesaid, became, and was, moot. That by virtue of the fact that said petition had become moot, peti- [fol. 106] tioner on behalf of Miriam Christine Stevenson on November 1, 1950 moved the Court to dismiss the said petition without prejudice, and said motion was thereupon granted.

XV

Petitioner is informed and believes and on the basis of such information and belief alleges that it is the intention of said H. R. Landon, District Director of the Immigration and Naturalization Service, to hold said Miriam Christine Stevenson in custody without bail indefinitely and until the final determination of her deportability.

XVI

That in causing the arrest and detention of said Miriam Christine Stevenson upon and under the warrant of arrest issued July 8, 1949, and served July 26, 1949, said District Director acted without authority in law, and the arrest and detention thereunder were false, illegal and void.

XVII

That in causing the arrest and detention of said Miriam Christine Stevenson upon and under said warrant dated July 8, 1949, and in causing the arrest of said Miriam Christine Stevenson upon and under said warrant issued October 31, 1950, and in detaining said Miriam Christine Stevenson thereunder without bail, said District Director has acted, and is acting, as the agent and representative of the Attorney General of the United States. That such arrest and detention under the circumstances hereinabove set forth [fol. 107] have at all times constituted, and now constitute, an abuse of the discretion vested in the Attorney General of the United States by section 20 of the Immigration Act of February 5, 1917, as amended (57 Stat. 553), in the following, among other, respects:

(a) That no facts or circumstances exist or can be shown to justify revocation of a bond under which said Miriam Christine Stevenson has heretofore been at liberty, as hereinbefore alleged;

(b) That no facts or circumstances exist or can be shown to justify detention of said Miriam Christine Stevenson indefinitely, or at all, without bond;

(c) That said Miriam Christine Stevenson at all times herein mentioned has been, now is, and will continue to be, available to appear and will appear at any and all hearings or other lawful proceedings in connection with the determination of her deportability;

(d) That said Miriam Christine Stevenson at all times herein mentioned has been, and now is, a law-abiding resident of the State of California, and since 1926 of the City of Los Angeles, with her home and family in the City of Los Angeles, and with all of her interests and activities centered in and around the City of Los Angeles;

(e) That by virtue of the grant by the Supreme Court of the United States on October 23, 1950 of a [fol. 108] petition for Writ of Certiorari in the case of *United States* v. *Dennis, et al.*, for the express purpose of reviewing the constitutionality of the Statute known as the Smith Act of 1940 (54 Stat. 670, 671), the deportability of said Miriam Christine Stevenson under said Act is placed in serious doubt and the validity of the charges against her as alleged above is placed in question.

XVIII

That the action of the said District Director in arresting and detaining said Miriam Christine Stevenson as aforesaid at all times constituted, and now constitutes, a denial of due process of law to said Miriam Christine Stevenson in the following, among other, respects:

(a) That said Miriam Christine Stevenson was arrested as aforesaid on October 24, 1950 without warrant and without authority in law;

(b) That said District Director revoked the bond under which said Miriam Christine Stevenson has been at liberty as aforesaid without notice to said Miriam Christine Stevenson or her counsel, and without hearing;

(c) That such bond was revoked without claim or showing by said District Director of any facts, circumstances or conditions warranting any change in the terms upon which said Miriam Christine Stevenson was, or has been, at liberty upon her bond;

[fol. 109] (d) That by such arrest and detention said Miriam Christine Stevenson has been deprived without due process of law of the opportunity to earn her living and to support herself and those dependent upon her;

(e) That the deportation proceedings against said Miriam Christine Stevenson are in their initial stages

and are likely to continue for many months, and that her detention without bail throughout such proceedings will deprive her of her liberty arbitrarily and in violation of the due process clause of the Fifth Amendment to the Constitution of the United States.

XIX

That the detention of said Miriam Christine Stevenson without bond as aforesaid constitutes a denial of bail in violation of the Eighth Amendment to the Constitution of the United States, and under the circumstances hereinbefore alleged further constitutes cruel and unusual punishment, in violation of said Eighth Amendment.

XX

That section 20 of the Immigration Act of February 5, 1917, as amended by section 23 of Public Law 831, 81st Congress (commonly known as Subversive Activities Control Act of 1950) and Section 1 of the Act of October 16, 1918 (8 U.S.C. 137), as amended, are, and each of them is, unconstitutional and void in that they deprive persons, including said Miriam Christine Stevenson, of liberty and property without due process of law, in violation of the [fol. 110] Fifth Amendment to the Constitution of the United States in that they abridge the freedom of persons, including said Miriam Christine Stevenson, of speech, the press and assembly and the right to petition the government for redress of grievances, in violation of the First Amendment to the Constitution of the United States, and in that they purport to authorize indefinite detention of persons, including said Miriam Christine Stevenson, without bond prior to final determination of deportability.

XXI

That this petition is made and verified by Rose S. Rosenberg as attorney for said Miriam Christine Stevenson, and not by said Miriam Christine Stevenson as the person in custody, for the reason that said Miriam Christine Stevenson is confined and restrained of her liberty at Terminal Island, California, that said Miriam Christine Stevenson is not permitted to see anyone, including her counsel, after 5:00 P.M. of any day, and that it is not practicable for the undersigned to travel to Terminal Island and visit said

Miriam Christine Stevenson for the purpose of securing her verification during the hours when said Miriam Christine Stevenson may be visited; and for the further reason that the undersigned has personal knowledge of many of the facts and circumstances hereinabove alleged.

XXII

That no previous application for a writ of habeas corpus [fol. 111] has been made in this matter to any other court, but that previous application was made to this Court as hereinabove alleged in paragraph XIV.

XXIII

That notice of the presentation of this application has been served upon said District Director and upon the United States Attorney.

Wherefore, said petitioner prays that a Writ of Habeas Corpus may be granted directed to H. R. Landon, District Director, Immigration and Naturalization Service, and to any Sheriff, Marshal, Constable, or other peace officer having custody of the body of Miriam Christine Stevenson, formerly Burroughs, nee Kenkel, alias Miki Ashton, commanding him to have the body of said Miriam Christine Stevenson before this Court at the time and place to be specified, to do and receive what shall then and there be considered concerning said Miriam Christine Stevenson, together with the time and cause of her detention, and said Writ; that said Miriam Christine Stevenson shall not be transferred nor removed pending said return from or out of the jurisdiction of this Court; and that pending hearing hereupon said Miriam Christine Stevenson may be restored to her liberty upon reasonable bond.

Dated: this 2nd day of November, 1950.

(S.) Rose S. Rosenberg.

[fol. 112] *Duly sworn to by Rose S. Rosenberg. Jurat omitted in printing.*

Received copy of the within Notice of Presentation of Petition for Writ of Habeas Corpus and Petition for Writ of Habeas Corpus this 2nd day of November, 1950.

Ernest A. Tolin, U. S. Attorney, by Mary Wentworth.

[fol. 113] Received copy of the within Notice of Presentation of Petition for Writ of Habeas Corpus and Petition for Writ of Habeas Corpus this 2nd day of November 1950.

H. R. Landon, District Director, Immigration and Naturalization Service, by H. R. Landon.

[File endorsement omitted.]

[fol. 114] In United States District Court

Order to Show Cause—November 3, 1950

Upon the reading and filing of the petition of Rose S. Rosenberg, and good cause appearing therefor,

It is hereby ordered that H. R. Landon, District Director of the Immigration and Naturalization Service, show cause, if any he have, before me in the above entitled Court, at the United States Court House Building, 312 North Spring Street, Los Angeles, California, on the 6 day of November, 1950, at 2 o'clock P.M. of said day, why he should not release from his custody, or the custody of such officers or agents of the Los Angeles District of the Immigration and Naturalization Service as may have custody of the same, upon bond in a reasonable sum, the body of Miriam Christine Stevenson, formerly Burroughs, nee Kenkel, alias Miki Ashton.

It is further ordered that a copy of said Petition and a copy of this Order be served upon said District Director on November 3rd, 1950, before 5:00 P.M. of said day.

Dated: This 3rd day of November, 1950.

(S.) Ben Harrison, Judge of the United States District Court.

[File endorsement omitted.]

[fol. 115] In United States District Court

Amendment to Petition for Writ of Habeas Corpus—Filed November 6, 1950

Petitioner, Miriam Christine Stevenson, by her counsel, with leave of the court, hereby amends her petition for

writ of habeas corpus on file herein by adding thereto the following paragraph to be designated Paragraph XVIII A:

XVIII A

Petitioner is informed and believes and on the basis of such information and belief alleges that in directing that petitioner be held without bond, as aforesaid, the Attorney General at all times herein mentioned has acted and continues to act solely upon the conslusion that there is reasonable cause to believe that if petitioner were enlarged on bail she would engage in activities which would be prejudicial to the public interest and would endanger the welfare and safety of the United States. Petitioner denies that there is reasonable or any cause for such conclusion or for such belief, denies that she has engaged at any time in any such activities or conduct, and specifically denies that she will engage in or plans, intends, contemplates, proposes or considers engaging in, if enlarged on her bond, any activities or conduct which would be prejudicial to the public interest or would endanger the welfare or safety of the United States. Petitioner has never been informed or advised by the Attorney General or by any agent or subordinate of the Attorney General of the facts, if any, upon which the Attorney General bases the conclusion that there is reason-
[fol. 116] able cause to believe petitioner, if enlarged, would engage in such activities; nor upon what past activities of petitioner, if any, the Attorney General relies for such conclusion; nor what activities the Attorney General anticipates would be engaged in by petitioner if she should be enlarged; nor in what respect such activities if engaged in are deemed by the Attorney General to be prejudicial to the public interest or to endanger the welfare and safety of the United States. Petitioner further alleges that repeatedly since her said arrest on October 24, 1950, she has requested such information of said District Director as agent of the Attorney General and that said District Director at all times since October 24, 1950, has failed and refused to furnish such information or any information whatever with respect to the reasons for petitioner's detention.

Dated: this 6th day of November, 1950.

(S.) Rose S. Rosenberg.

[File endorsement omitted.]

[fol. 117] IN UNITED STATES DISTRICT COURT

RETURN TO ORDER TO SHOW CAUSE WHY WRIT SHOULD NOT BE GRANTED—Filed November 6, 1950

I, Herman R. Landon, District Director of the Immigration and Naturalization Service, United States Department of Justice, Los Angeles, California, respondent herein, as and for my return to order to show cause why writ of habeas corpus should not be granted in the above entitled case, respectfully state:

I

That Miriam Christine Stevenson, hereinafter referred to as the petitioner, is not being illegally restrained by me of her liberty, but is in my custody under proper and lawful authority.

II

That the said petitioner is in my custody pursuant to a warrant of arrest, dated October 31, 1950, issued by authority of the Attorney General, directing that the petitioner be taken into custody and granted a hearing to enable her to show cause why she should not be deported in conformity with law, a certified copy of which is attached hereto as a part of this return and marked Exhibit "A".

III

That there is reasonable cause to believe that if the said petitioner were enlarged on bail *he* would engage in activities which would be prejudicial to the public interest, and would endanger the welfare and safety of the United [fols. 118-119] States.

Wherefore, I, Herman R. Landon, District Director, Immigration and Naturalization Service, United States Department of Justice, pray that the said petition for issuance of a writ of habeas corpus in the case of the petitioner be denied.

(S.) Herman R. Landon, District Director, Immigration & Naturalization Service, United States Department of Justice, District No. 16.

Duly sworn to by Herman R. Landon. Jurat omitted in printing.

[fol. 120] UNITED STATES OF AMERICA, : DEPARTMENT OF JUSTICE, IMMIGRATION AND NATURALIZATION SERVICE

Los Angeles, California,
November 6, 1950.

CERTIFICATION

By virtue of the authority vested in me by 8 C. F. R. 383.7, a regulation issued by the Commissioner of Immigration and Naturalization with the approval of the Attorney General pursuant to 5 U. S. C. 22 and 311, and 8 U. S. C. 102, 222, 458 and 727.

I hereby certify that the annexed document, a Warrant of Arrest, is a true copy of the original thereof from the records of the said Immigration and Naturalization Service, Department of Justice, relating to Miriam Christine Stevenson, File No. 1600-52326, of which the Attorney General is the legal custodian.

In Witness Whereof, I have hereunto set my hand and caused the seal of the Department of Justice, Immigration and Naturalization Service, to be affixed, on the day and year first above written.

(S.) Herman R. Landon, District Director, Immigration and Naturalization Service. (Seal.)

[fol. 121] EXHIBIT A TO RETURN

Warrant for Arrest of Alien, United States of America, Department of Justice

Los Angeles, Calif.

1600-52336

No. A-5822361

To District Enforcement Officer, Los Angeles, California.
Or to any Immigrant Inspector in the service of the United States:

Whereas, from evidence submitted to me, it appears that the alien Miriam Christine Stevenson, formerly Burroughs nee Krenkel alias Miki Ashton who entered this country at San Ysidro, California on the 26th day of December, 1928

has been found in the United States in violation of the immigration laws thereof, and is subject to be taken into custody and deported pursuant to the following provisions of law, and for the following reasons, to wit:

The Act of Oct. 16, 1918, as amended, in that she has been, after entry, a member of the following class set forth in Section 1(2)(C) of said Act: An alien who was a member of the Communist Party of the United States.

I, by virtue of the power and authority vested in me by the laws of the United States, hereby command you to take into custody the said alien and grant her a hearing to enable her to show cause why she should not be deported in conformity with law. The expenses of detention, hereunder, [fol. 122] if necessary, are authorized payable from the appropriation "Salaries and Expenses, Immigration and Naturalization Service, 1951."

Pending determination of deportability, the alien named is to be continued in custody. This warrant supersedes that issued on the 8th day of July, 1949.

For so doing, this shall be your sufficient warrant.

Witness my hand and seal this 31st day of October, 1950.

(S.) H. R. Landon, District Director.

Acknowledgment of Service

Receipt is hereby acknowledged his 6th day of November, 1950, of a copy of the Return to Order to Show Cause Why Writ of Habeas Corpus Should Not Be Granted, in the above-entitled and numbered case.

Rose S. Rosenberg, Attorney for Petitioner, by (S.) Rose S. Rosenberg.

[File endorsement omitted.]

[fol. 123] In United States District Court

Motion to Strike Portions of Return to Order to Show Cause—Filed November 10, 1950

Miriam Christine Stevenson, Petitioner herein, hereby moves the above entitled Court to strike from the Return of Herman R. Landon to the order to show cause herein the

following portions thereof, upon the ground that the same are, and each of them is sham, irrelevant, not a factual response, and mere conclusion:

(1) All of paragraph I thereof.
(2) All of paragraph III thereof.

Said motion is based upon the petition of petitioner herein, the attached memorandum of points and authorities, and all the other records and files herein.

Dated: November 8, 1950.

(S.) Rose S. Rosenberg, Attorney for Petitioner.

Received copy of the within Motion to Strike Portions of Return this 9th day of Nov. 1950.

(S.) Walter S. Binns, Attorney for ——.

[File endorsement omitted.]

[fol. 124] IN UNITED STATES DISTRICT COURT

ANSWER TO RETURN TO ORDER TO SHOW CAUSE WHY WRIT SHOULD NOT BE GRANTED—Filed November 10, 1950

Comes now Miriam Christine Stevenson, petitioner herein, and for her answer to the Return of H. R. Landon, District Director of the Immigration and Naturalization Service, Los Angeles, California, respondent herein, admits, denies and alleges as follows:

I

Alleges that such Return in whole, and particularly paragraphs I and III thereof, fails to set forth facts sufficient to constitute a return to the order to show cause herein.

II

Alleges that such Return in whole, and particularly paragraphs I and III thereof, fails to set forth facts sufficient to show any cause why the writ prayed for by the petitioner, on file herein, should not be granted, and fails to set forth any fact whatever responsive to said order to show cause.

III

Answering paragraphs I of said Return, denies that petitioner is not being illegally restrained of her liberty by respondent, and denies that petitioner is in the custody of respondent under proper and lawful authority.

[fol. 125]

IV

Answering paragraph II of said Return, admits that petitioner is in the custody of respondent under color of a warrant of arrest dated October 31, 1950, a certified copy of which warrant is attached to said Return and marked Exhibit A, and alleges that such custody is unlawful and an abuse of discretion on the part of respondent and of the Attorney General of the United States.

V

Answering Paragraph III of said Return, denies that there is reasonable or any cause to believe that if petitioner were enlarged on bail she would engage in activities which would be prejudicial to the public interest and would endanger the welfare and safety of the United States, and in connection therewith refers to and by this reference incorporates herein as if fully set forth each and all of the denials and allegations set forth in her amendment to the Petition for Writ of Habeas Corpus on file herein, designated paragraph XVIIIA thereof.

VI

Refers to the allegations of her Petition for Writ of Habeas Corpus on file herein, set forth in paragraphs I to XXIII inclusive, and by this reference incorporates each and all of the allegations thereof as if the same were fully set forth herein.

Wherefore, petitioner prays that a writ of habeas corpus [fol. 126] issue and that she be forthwith restored to her liberty upon reasonable bond.

(S.) Rose S. Rosenberg, Attorney for Petitioner.

Received copy of the within Answer to Return this 9th day of Nov. 1950.

(S.) Walter S. Binns, Attorney for —— ——.

[File endorsement omitted.]

[fol. 127] IN UNITED STATES DISTRICT COURT

STIPULATION FOR SUBMISSION OF ACTION—Filed November 10, 1950

It is hereby stipulated by and between the undersigned counsel for the petitioner and for the respondent herein that:

(1) The above entitled matter has been submitted to the Court upon a record consisting of:

(a) The Petition for Writ of Habeas Corpus, as amended with leave of the Court, by the Amendment to Petition for Writ of Habeas Corpus;

(b) The Order to Show Cause why writ of habeas corpus should not issue;

(c) The respondent's Return to the Order to Show Cause Why Writ Should Not be Granted;

(d) The petitioner's Motion to Strike Portions of Return to Order to Show Cause;

(e) The petitioner's Answer to Return to Order to Show Cause Why Writ Should Not Be Granted;

(f) This Stipulation.

(2) The Motion to Strike Portions of Return to Order to Show Cause has been denied.

(3) The petitioner waives oral testimony in support of the Petition and Answer and submits the matter upon the foregoing record and stipulation, without offering any oral testimony, notwithstanding that the Court has offered to receive such testimony.

[fol. 128] (4) For the purpose of this record it is deemed that a writ of habeas corpus has been issued and that a hearing has been had upon a return to the writ. For said purpose the Return to Order to Show Cause Why Petition For Writ of Habeas Corpus Should Not Be Granted and the Answer thereto are deemed the return and traverse to the writ. The determination upon this hearing shall be either that the writ is granted or that the writ is discharged.

Dated: November 9, 1950.

(S.) Rose S. Rosenberg; Ernest A. Tolin, United States Attorney, (S.) Walter S. Binns, Chief Assistant United States Attorney. Ray H. Kinnison,

Assistant United States Attorney, Chief of Criminal Division, Attorneys for Respondent, H. R. Landon, District Director.

[File endorsement omitted.]

[fols. 129-139] IN UNITED STATES DISTRICT COURT

MINUTE ENTRY OF TRIAL AND DISPOSITION OF CASE

At a stated term, towit: the September Term, A. D. 1950 of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles, on Friday, the 10th day of November in the year of our Lord one thousand nine hundred and fifty.

Present: The Honorable Ben Harrison, District Judge.

In re Frank Carlson, aka Solomon Skolnick, No. 12491-BH-Civil.

In re Miriam Christine Stevenson, etc. No. 12492-BH-Civil. In re Harry Carlisle, aka Harry Carlyle, No. 12503-BH-Civil.

In re David Hyun, No. 12505-BH-Civil.

(Same order in each case:) At 2 P. M. court convenes herein and each of the petitioners appearing by their counsel of record and Walter S. Binns, Ass't U. S. Att'y, appearing as counsel for respondent;

Written stipulation for submission of action is presented and filed.

The Court, at this time, states that an Opinion of the Court will later be filed, and orders the Writ discharged. Counsel for respondent is directed to prepare and present proposed order discharging the Writ, for signature.

Application is made on behalf of petitioner that the Court fix the amount of bail pending appeal, and the Court orders said application denied.

[fol. 140] IN THE UNITED STATES DISTRICT COURT IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION

No. 12492-BH

In re MIRIAM CHRISTINE STEVENSON, Formerly Burroughs, nee Kenkel, Alias Miki Ashton

ORDER DISMISSING PETITION FOR WRIT OF HABEAS CORPUS AND DISCHARGING WRIT—November 13, 1950

The above-entitled matter came on regularly for hearing on an Order to Show Cause why a petition for writ of habeas corpus should not be granted on November 7, 1950 in the above entitled Court before the Honorable Ben Harrison; the petitioner being represented by *his* counsel, Rose S. Rosenberg, and the respondent by his counsel, Ernest A. Tolin, United States Attorney, appearing by Walter S. Binns and Ray H. Kinnison, Assistant United States Attorneys; and the Court having read the petition and the return on file and heard arguments, and the parties by their attorneys having stipulated that a writ of habeas corpus be deemed to have issued and that the return on file be considered as the return to said writ; and the petition as amended be deemed a traverse by petitioner; and it being further stipulated that the petitioner did not desire to present evidence in support of the traverse;

It is hereby ordered, adjudged and decreed that the petition for writ of habeas corpus herein is dismissed, and that [fol. 141] the writ of habeas corpus issued herein be and hereby is discharged.

Dated: November 13, 1950.

(S.) Ben Harrison, United States District Judge.

Approved as to form: (S.) Rose S. Rosenberg, by John W. Porter.

Judgment Entered Nov. 13, 1950, Book 69, Page 183. Edmund L. Smith, Clerk, by C. A. Simmons, Deputy.

[File endorsement omitted.]

[fol. 142] IN UNITED STATES DISTRICT COURT

NOTICE OF APPEAL—November 10, 1950

Notice is hereby given that Miriam Christine Stevenson, petitioner above named hereby appeals to the United States Court of Appeals for the Ninth Circuit, from the order discharging the writ of habeas corpus herein, made and entered in this action by the United States District Court, Honorable Ben Harrison, Judge Presiding, on the 10th day of November, 1950.

Dated this 10th day of November, 1950.

(S.) Rose S. Rosenberg.

[File endorsement omitted.]

[fol. 143] IN UNITED STATES DISTRICT COURT

STIPULATION AS TO RECORD ON APPEAL—Filed November 15, 1950

It is hereby stipulated by and between the undersigned counsel for the Petitioner-Appellant and for the Respondent herein that the following papers shall constitute the record on appeal to the United States Court of Appeals for the Ninth Circuit herein:

1. The Petition for Writ of Habeas Corpus;
2. The Amendment to Petition for Writ of Habeas Corpus;
3. The Order to Show Cause Why Habeas Corpus Should Not Issue;
4. The respondent's Return to Order to Show Cause Why Writ Should Not Be Granted;
5. The petitioner's Motion to Strike Portions of Return to Order to Show Cause;
6. The petitioner's Answer to Return to Order to Show Cause Why Writ Should Not Be Granted;
7. Stipulation for Submission of Action;
8. Order Discharging Writ of Habeas Corpus, dated November 10, 1950;
9. Memorandum Opinion of Honorable Ben Harrison, United States District Judge, dated November 10, 1950;

10. Minute Order Denying petitioner-appellant's application for bail, entered November 10, 1950;

11. Reporter's Transcript of hearing on November 7, 1950, or such portions thereof as may be designated.

[fol. 144] 12. Notice of Appeal dated November 10, 1950.

Dated: This 14 day of November, 1950.

(S.) Rose S. Rosenberg, Attorney for Petitioner-Appellant. Ernest A. Tolin, U. S. Attorney, by (S.) Walter S. Binns, Attorney for Respondent.

[File endorsement omitted.]

[fols. 145-147] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 148] IN UNITED STATES DISTRICT COURT

WRIT OF HABEAS CORPUS—January 2, 1951

The President of the United States of America

To H. R. Landon, District Director of the Immigration and Naturalization Service, Los Angeles, California, Greeting:

You are hereby commanded, that the body of Miriam Christine Stevenson, formerly Burroughs, nee Kenkel, alias Miki Ashton, by you restrained of *his* liberty, as it is said detained by whatsoever names the said Miriam Christine Stevenson, formerly Burroughs, nee Kenkel, alias Miki Ashton, may be detained, together with the day and cause of her being taken and detained, you have before the Honorable Ben Harrison, Judge of the United States District Court in and for the Southern District of California, at the court room of said Court, in the City of Los Angeles at 10:00 o'clock a. m., on the 5th day of January, 1951, then and there to do, submit to and receive whatsoever the said Judge shall then and there consider in that behalf; and have you then and there this writ.

Witness the Honorable Ben Harrison, United States District Judge at Los Angeles, California this 2nd day of January, A. D. 1951.

Edmund L. Smith, Clerk, by (S.) Murray E. Wire, Deputy Clerk. (Seal.)

[fol. 149] UNITED STATES MARSHAL'S RETURN

So. District of Calif., ss:

Received the within writ the 3 day of Jan. 1951, and executed same. Serving H. R. Landon by leaving writ with Mr. H. A. Field, Room #651, Fed. Blg. L. A.

James J. Boyle, U. S. Marshal, by (S.) Travis F. Oltman, Deputy Marshal

Marshal's Fee $2.00.

[File endorsement omitted.]

[fol. 150] IN UNITED STATES DISTRICT COURT

RETURN TO WRIT OF HABEAS CORPUS—Filed January 4, 1951

I, Herman R. Landon, District Director of the Immigration and Naturalization Service, United States Department of Justice, Los Angeles, California, respondent herein, as and for my return to writ of habeas corpus in the above entitled case, respectfully state:

I

That Miriam Christine Stevenson, hereafter referred to as the petitioner, is not being illegally restrained by respondent of her liberty, but is in respondent's custody under proper and lawful authority.

II

That the said petitioner is a native and subject of Great Britain, born at London, England, on or about August 26, 1907.

III

That a warrant for the said petitioner's arrest was issued by authority of the Attorney General on July 8, 1949, charging that she was subject to deportation under the Act of October 16, 1918, as amended (8 U. S. C. 137), a certified copy of which warrant of arrest is attached hereto as a part of this return and marked Exhibit "A".

IV

That the said petitioner was taken into custody on the aforesaid warrant of arrest on July 26, 1949, and on the [fol. 151] same date was released from custody on a delivery bond in the sum of $2,000.

V

That, after a hearing on said warrant of arrest, to give said petitioner an opportunity to show cause why she should not be deported, a hearing de novo under the administrative procedure act was ordered as a result of the decision of the Supreme Court in the case of *Sung v. McGrath*, 339 U. S. 33.

VI

That on September 26, 1950, the Acting Commissioner of Immigration and Naturalization, Washington, D. C., requested the District Director of Immigration and Naturalization, Los Angeles, California, to submit a report covering all aliens in the Los Angeles District who were currently active members of the Communist Party and who were under deportation proceedings on charges under the Act of October 16, 1918, as amended (8 U. S. C. 137).

VII

That on October 6, 1950, the District Director of Immigration and Naturalization, Los Angeles, California, submitted to the Acting Commissioner of Immigration and Naturalization, Washington, D. C., a report containing summaries of facts as reflected in the confidential and official records of the Government at Los Angeles in the cases of eleven aliens indicated to be currently active members of the Communist [fol. 152] Party, and in the cases of eight aliens indicated to be past members of the Communist Party, all of whom were the subjects of pending deportation proceedings under

the Act of October 16, 1918, as amended (8 U. S. C. 137), which report recited facts tending to establish that the aforesaid petitioner was one of the said eleven currently active members of the Communist Party, some of which facts are recited in respondent's affidavit which is attached hereto as a part of this return and marked Exhibit "B".

VIII

That on October 21, 1950, the following instructions were received by the District Director of Immigration and Naturalization, Los Angeles, California, by radio from the Acting Commissioner of Immigration and Naturalization, Washington, D. C.:

> "Apprehend Immediately and Detain the Following Aliens Pursuant to Section Twenty of Nineteen Seventeen Act as Amended by Internal Security Act: David Hyun and Harry Carlisle and Solomon Sokolnick. Also Apprehend and Detain All Active Communists Under Proceedings in Your District Unless Detention Would Result in Severe Hardship Because of Individual's Physical Condition or Family Situation. Give Priority to Those Named."

IX

That pursuant to the aforesaid instructions the petitioner [fol. 153] was taken into custody on October 24, 1950, on the aforesaid warrant of arrest issued on July 8, 1949.

X

That on October 27, 1950, the following radiogram was received by the District Director of Immigration and Naturalization, Los Angeles, California, from the Acting Commissioner of Immigration and Naturalization, at Washington, D. C.:

> "For Your Information and That of United States Attorneys and Aliens and Their Attorneys the Instruction to You of October Twenty First to Take Into Custody and Detain the Alien Communists Was Issued Only After the Cases Had Been Examined in the Light of the Internal Security Act of Nineteen Fifty and the Spirit and Intention Thereof and All of the Factors Concerning the Likelihood of the Deportability and the

Activities of Said Alien Had Been Given Careful Consideration as Well as the Factors of Undue Hardship Which Continued Detention Might Impose Stop As You Have Already Been Instructed the Hearings and Steps Towards Disposition of These Cases Are To Be Given Top Priority Stop Also as you Have Been Advised These Aliens Were Ordered Detained by Authority of the Attorney General Delegated to Me by Section Nine Zero Point One of Title Eight CFR Paren Twelve FR Five Zero Seven Two July Thirty One Nineteen Forty Seven Paren Under Section Thirty Seven of the [fol. 154] Alien Registration Act of Nineteen Forty Comma Eight USC Four Five Eight''.

XI

That on October 31, 1950, while the said petitioner continued in custody under the warrant of arrest issued on July 8, 1949, a new warrant of arrest was issued by authority of the Attorney General charging that she was subject to deportation under the Act of October 16, 1918 (8 U. S. C. 137), as amended by the Internal Security Act of 1950, and served upon the said petitioner, which said warrant of arrest of October 31, 1950, superseded the said warrant of arrest issued on July 8, 1949; a copy of which said warrant of arrest of October 31, 1950, is attached hereto as a part of this return and marked Exhibit "C".

XII

That pursuant to outstanding instructions from the Acting Commissioner of Immigration and Naturalization, Washington, D. C., the case of petitioner, as other deportation cases under the Act of October 16, 1918, as amended (8 U. S. C. 137), has been given first priority in expediting hearing, to the end that the said case may be disposed of as speedily as possible, but delay has been encountered from counsel for the petitioner, as recited in more detail in respondent's affidavit which is attached hereto as a part of this return and marked Exhibit "B".

[fol. 155]

XIII

That the Acting Commissioner of Immigration and Naturalization, Washington, D. C., acting for the Attorney General, has exercised the grant of statutory discretion in Sec-

tion 20 of the Immigration Act of 1917 (8 USC 156), as amended by the Internal Security Act of 1950, to take the said petitioner into custody and to continue her in custody without bond pending final determination of her deportability, and in exercising said discretion to detain the said petitioner without bond the Acting Commissioner of Immigration and Naturalization, Washington, D. C., has carefully considered facts which in his judgment establish that the said petitioner is a currently active member of the Communist Party engaged in the execution of the program of the Communist Party, the central purpose of which is to subvert the existing Government of the United States indirectly by espionage and sabotage and directly by force and violence and to substitute a totalitarian dictatorship committed to the destruction of individual liberty and private property; and that, moreover, said facts cause the said Acting Commissioner to believe that if the said petitioner were enlarged on bail she would engage in activities which would be prejudicial to the public interest, and would endanger the welfare and safety of the United States—which findings the said Acting Commissioner has communicated to respondent on the basis of facts which respondent has communicated to the said Acting Commissioner, tend-
[fol. 156] ing to establish the said petitioner's current affiliation with and activity on behalf of the Communist Party, as recited herein.

Wherefore, I, Herman R. Landon, District Director, Immigration and Naturalization Service, United States Department of Justice, pray that the writ of habeas corpus be dismissed.

(S.) Herman R. Landon, District Director Immigration & Naturalization Service, United States Department of Justice, District No. 16.

[fol. 157] EXHIBIT "A" TO RETURN

Copy

Warrant for Arrest of Alien
United States of America, Department of Justice,
Washington

1600-52336
No. A-5822361

To District Director of Immigration and Naturalization, Los Angeles, California or to any Immigrant Inspector in the service of the United States:

Whereas, from evidence submitted to me, it appears that the alien Miriam Christine Stevenson, formerly Burroughs, nee Krenkel, alias Miki Ashton who entered this country at San Ysidro, California on the 26th day of December, 1928 has been found in the United States in violation of the immigration laws thereof, and is subject to be taken into custody and deported pursuant to the following provisions of law, and for the following reasons, to wit: The Immigration Act of May 26, 1924, in that at the time of entry, she was an immigrant not in possession of a valid immigration visa and not exempted from the presentation thereof by said Act or regulations made thereunder; the Act of October 16, 1918, as amended, in that she was, after entry, a member of the following class, set forth in Section 1 of said Act; An alien who is a member of an organiza- [fol. 158] tion, association, society, or group that advises, advocates, or teaches the overthrow by force or violence of the Government of the United States; and the Act of October 16, 1918, as amended, in that she was, after entry, a member of the following class, set forth in Section 1 of said Act: An alien who is a member of an organization, association, society, or group that writes, circulates, distributes, prints, publishes, or displays any written or printed matter advising, advocating or teaching the overthrow, by force or violence, of the Government of the United States.

I, by virtue of the power and authority vested in me by the laws of the United States, hereby command you to take into custody the said alien and grant her a hearing to

enable her to show cause why she should not be deported in conformity with law. The expenses of detention, hereunder, if necessary, are authorized payable from the appropriation "Salaries and Expenses, Immigration and Naturalization Service, 1950." Authority has been granted for release under bond in the sum of $2000.

For so doing, this shall be your sufficient warrant.

Witness my hand and seal this 8th day of July, 1949.

(S.) W. F. Kelly, Assistant Commissioner, Enforcement Division.

[fol. 159] EXHIBIT "B" TO RETURN

IN THE UNITED STATES OF AMERICA, SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION

STATE OF CALIFORNIA,
County of Los Angeles, ss:

Comes now Herman R. Landon, respondent herein, who states and deposes, as follows:

I. That he is District Director for the United States Immigration and Naturalization Service, Department of Justice, for the Los Angeles District, and as such is custodian of the records of the United States Immigration and Naturalization Service in said district.

II. With respect to Miriam Christine Stevenson, the petitioner herein, the Service is in possession of evidence showing that said petitioner has been a member of the Communist Party of the United States and has actively participated in its program; more specifically, that the petitioner was a Unit Organizer and a member of the Hollywood Subsection Committee of the Communist Party in 1936; that she was the Secretary of a Communist Party Unit in 1938; that she participated in the "Lenin" celebration in Los Angeles; that she admitted in 1948 attending Communist Party meetings and also admitted membership in the American League for Peace and Democracy (an organization designated by the Attorney General as Communist, F.R. 315, No. 231); that she was a correspondent [fol. 160] of the People's Educational Center in 1948 (an organization designated by the Attorney General as Communist, F. R. 315, No. 231); and that in 1950 at a deporta-

tion hearing she refused to answer questions concerning her membership in the Communist Party on the ground of self-incrimination.

III. That the Service records show with respect to petitioner's hearings under Service Warrant of Arrest (Government's Exhibit "C") that there have been undue delays in hearings thereunder. The case was first scheduled for hearing November 30, 1950 but taken off calendar at the request of petitioner's counsel. It was next set for a hearing on December 6, 1950 and continued on motion of petitioner's counsel. It was again set for hearing on December 11, 1950 and again continued to December 14, 1950 on motion of petitioner's counsel. On the latter date, the case was again continued on motion of petitioner's counsel to December 15, 1950. On the latter date, it was again continued on motion of petitioner's counsel and date set for January 5, 1951.

(S.) Herman R. Landon.

Subscribed and sworn to before me this 4th day of January, 1951. Edmund L. Smith, Clerk U. S. District Court. By: Michael F. Leone, Deputy Clerk. (Seal.)

[fol. 161] EXHIBIT "C" TO RETURN

Copy

Warrant

For Arrest of Alien

United States of America

Department of Justice

Los Angeles, California

1600-52336
No. A-5822361

To District Enforcement Officer, Los Angeles, California or to any Immigrant Inspector in the service of the United States:

Whereas, from evidence submitted to me, it appears that the alien Miriam Christine Stevenson, formerly Burroughs nee Krenkel alias Miki Ashton who entered this country

at San Ysidro, California on the 26th day of December, 1928 has been found in the United States in violation of the immigration laws thereof, and is subject to be taken into custody and deported pursuant to the following provisions of law, and for the following reasons, to wit:

The Act of Oct. 16, 1918, as amended, in that she has been, after entry, a member of the following class set forth in Section 1(2)(c) of said Act: An alien who was a member of the Communist Party of the United States.

I, by virtue of the power and authority vested in me by the laws of the United States, hereby command you to take into custody the said alien and in conformity with law. The expenses of detention, hereunder, if necessary, are [fol. 162] authorized payable from the appropriation "Salaries and Expenses, Immigration and Naturalization Service, 1951." Pending determination, of deportability, the alien named is to be continued in custody. This warrant supersedes that issued on the 8th day of July, 1949.

For so doing, this shall be your sufficient warrant.

Witness my hand and seal this 31st day of October, 1950.

(S.) H. R. Landon, District Director.

[fol. 163] *Duly sworn to by Herman R. Landon. Jurat omitted in printing.*

[fol. 164] (Title of District Court and Cause)

ACKNOWLEDGMENT OF SERVICE

Receipt is hereby acknowledged this 4 day of January, 1951, of a copy of the Return to Writ of Habeas Corpus in the above-entitled and numbered case.

Rose S. Rosenberg, Attorney for Petitioner, by (S.) Rose S. Rosenberg.

[File endorsement omitted.]

[fol. 165] IN UNITED STATES DISTRICT COURT

TRAVERSE TO RETURN TO WRIT OF HABEAS CORPUS—Filed January 5, 1951

Comes now Miriam Christine Stevenson, petitioner herein, and for her answer to the Return of H. R. Landon, District Director of the Immigration and Naturalization Service, Los Angeles, California, respondent herein, admits, denies and alleges as follows:

I

Alleges that such Return in whole, including exhibits thereto, fail to set forth facts to show any cause why the writ prayed for by the *petioner*, on file herein, should not be granted, and fails to set forth facts sufficient to constitute a return to the writ herein, and the detention of the petitioner herein is, therefore, unlawful, unconstitutional, and in violation of the mandate of the Court of Appeals in this cause.

II

Allegations with respect to delay are not responsive to writ nor do they furnish any fact to justify detention of petitioner herein.

III

In addition, the petitioner alleges that a final order of deportation cannot be made by the administrative body in less than a period of at least one year or more for the following reasons:

That deportation hearings before a local hearing examiner [fol. 166] of the Immigration and Naturalization Service will consume at least a period of six months, there having already elapsed a period of over two months since petitioner has been detained;

That the continuances requested by counsel and granted by the Hearing Officer were those normally involved in such proceeding, due, among other reasons, to preparation required for the case; securing of witnesses, and argument in the Circuit Court of Appeals in the cause herein; that several weeks will be required for the Hearing Officer to make findings and recommendations; that thereafter such Commissioner in Washington, D. C. who upon the examination of the complete record will make a ruling thereon,

which procedure will take at least six weeks. An appeal from such ruling, taken by either party to the Board of Immigration Appeals will require a minimum of three months; thereafter the Board of Immigration Appeals must make its final decision which, depending on the calendar, would normally consume four weeks. Thus merely to exhaust the administrative remedies to which the parties are entitled would require at least one year. Petitioner is not here setting forth the time that would be required to have a final adjudication of the deportation order, it being sufficient for the present purposes to point out that the judicial review to which the parties are entitled would necessarily consume a period of at least two years.

[fol. 167] IV

Refers to the allegations of her Petition for Writ of Habeas Corpus on file herein, set forth in Paragraphs I to XXIII inclusive, and by this reference incorporates each and all of the allegations thereof as if the same were fully set forth herein.

Wherefore, petitioner prays that a Writ of Habeas Corpus issue and that she be forthwith restored to her liberty upon reasonable bond.

(S.) Rose S. Rosenberg, Attorney for Petitioner.

Duly sworn to by Rose S. Rosenberg. Jurat omitted in printing.

[fol. 168] Received copy of the within Traverse to Return this 5 day of January, 1951.

(S.) Walter S. Binns, Attorney for ——.

[File endorsement omitted.]

[fol. 169] IN UNITED STATES DISTRICT COURT

SUPPLEMENTAL RETURN TO WRIT OF HABEAS CORPUS—Filed January 9, 1951

I, Herman R. Landon, District Director of the Immigration and Naturalization Service, United States Department of Justice, Los Angeles, California, respondent herein, here-

with supplement my Return to Writ of Habeas Corpus in the above entitled matter, and in answer to petitioner's Traverse thereto filed deny and allege as follows:

I

In answer to paragraph III thereof respondent alleges that a final order of deportation would be entered much sooner in the year if the petitioner consented to the holding of hearings, and specifically alleges that during the two months since the petitioner has been in custody, said hearing has been continued four times on motion of petitioner.

II

In answer to paragraph IV thereof, which incorporates by reference the petition heretofore filed, respondent has no information and belief and therefore denies all of the allegations contained therein.

III

In answer to paragraph XVII thereof, respondent denies that petitioner has been a law-abiding citizen since her residence in the State of California, City of Los Angeles and alleges that petitioner has been a member of the Communist party during all of said time.

[fol. 170] Wherefore, I, Herman R. Landon, District Director of the Immigration and Naturalization Service, United States Department of Justice, pray that the Writ of Habeas Corpus be dismissed.

(S.) Herman R. Landon, District Director Immigration & Naturalization Service, United States Department of Justice, District No. 16.

Dated: January 8, 1951.

[fol. 171] In United States District Court

Minute Entries of Trial

At a stated term, to wit: The September Term, A. D. 1950, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of

Los Angeles on Thursday the 11th day of January in the year of our Lord one thousand nine hundred and fifty-one.

Present: The Honorable Ben Harrison, District Judge.

In re Frank Carlson, aka Solomon Skolnick, No. 12491-BH-Civil.

In re Miriam Christine Stevenson, etc., No. 12492-BH-Civil.

In re Harry Carlisle, aka Harry Carlyle, No. 12503-BH-Civil.

In re David Hyun, No. 12505-BH-Civil.

For further hearing on Return of Writ; John W. Porter, Esq., appearing as counsel for Frank Carlson, petitioner in Case No. 12491-BH; Rose S. Rosenberg, Att'y, appearing as counsel for Miriam Christine Stevenson, petitioner in Case No. 12492-BH; Stanley Fleishman, Esq., appearing as counsel for Harry Carlisle, petitioner in Case No. 12503-BH; Milton S. Tyre, Esq., appearing as counsel for David Hyun, petitioner in Case No. 12505-BH; Walter S. Binns, Ass't U. S. Att'y, appearing as counsel for respondent; all four said petitioners being present;

Court makes a statement relative to the delay of the hearings of the deportation proceedings pending before the Immigration Service. Attorney Porter makes a statement of objections on behalf of Petitioner Carlson to the taking herein of evidence relative to the deportation hearings. [fol. 172] Attorneys Rosenberg, Fleishman, and Tyre, on behalf of the respective petitioners for whom they appear, state that they join in the objections made on behalf of Petitioner Carlson.

The Court thereupon directs that the hearing officers be called to the stand, and thereupon

John B. Bartus and Roy Waddell, respectively, are called, sworn, and testify relative to the hearings in the deportation proceedings.

The Court makes a further statement and states that the burden now shifts to the aliens, petitioners herein, to establish by competent evidence the allegations of their petitions wherein it is stated that the action of the Attorney General in detaining them without bail is arbitrary and capricious. The Court states that it now offers an opportunity to each of the petitioners to take the stand in their own behalf.

Attorney Porter makes a statement that he submits the petition of Carlson on the present state of the record. The

Court calls Petitioner Carlson to the stand, and his counsel objects thereto. Petitioner Carlson states that he desires to follow the advice of his counsel and not testify herein.

Attorney Rosenberg states that she takes the same position respecting the petitioner Stevenson, as counsel for petitioner Carlson. The Court inquires of Petitioner Stev- [fol. 173] enson if she desires to take the stand and the petitioner says that she takes the advice of her counsel not to testify.

Attorney Fleishman for Petitioner Carlisle states that he takes the same position as counsel for Petitioner Carlson. The Court inquires of Petitioner Carlisle if he desires to take the stand, and Carlisle states that he desires to follow the advice of his counsel and not testify herein.

Attorney Tyre makes a statement of objections to respondent filing a supplemental return in the David Hyun matter, and moves that the said supplemental return be stricken. The Court denies said motion to strike said supplemental return.

At the request of Attorney Tyre, Court at hour of 2:40 PM recesses.

At 2:57 court reconvenes herein and all being present as before, including all four petitioners and counsel for both sides.

Attorney Tyre makes a statement to the Court that Petitioner Hyun does not desire to testify herein. In answer to the Court's question Petitioner Hyun states that on advice of his counsel he does not desire to testify herein.

Counsel for each of the petitioners states to the Court that the matter is submitted on the record in this proceeding.

The Court makes a statement of its decision in each of these matters, and directs counsel for the respondent in [fol. 174] each case to prepare and present form of written order for signature, that the petition for Writ of Habeas Corpus is dismissed, and that the Writ of Habeas Corpus issued herein is discharged.

Attorney Porter moves that the Court fix bail pending appeal in the Carlson case. The Court makes a statement that it will not grant bail pending appeal in any of these cases.

Attorney Fleishman makes a statement relative to the condition of the health of Petitioner Carlisle, and presents two affidavits, which are filed herein, and requests that bail

be fixed pending appeal. Attorney Binns makes a statement and presents letter dated Jan. 8, 1951, from F. C. Stewart, Medical Director, Public Health Service, which is filed herein.

The Court makes a further statement relative to an examination of Petitioner Carlisle and report to the Court by an independent medical doctor. Attorney Fleishman states that he desires such an examination and report.

The Court states that it denies the motions for fixing of bail as to Petitioners Carlson, Stevenson, and Hyun, but that as to Petitioner Carlisle the application for fixing of bail pending appeal will now be taken under submission, and directs counsel to confer relative to a doctor to make an examination of Petitioner Carlisle and report to the Court.

Attorney Rosenberg makes further statement to the Court on behalf of Petitioner Stevenson in support of [fol. 175] release on bail pending appeal.

The Court and Attorneys Porter and Fleishman make further statements.

[fol. 176] IN UNITED STATES DISTRICT COURT

FINDINGS OF FACT AND CONCLUSIONS OF LAW—January 22, 1951

The above matter having come on for hearing upon the writ of habeas corpus on the 9th day of January 1951, at 2:00 P.M., and on the 11th day of January 1951 at 2:00 P.M., before the Honorable Ben Harrison, Judge presiding, Rose S. Rosenberg appearing as attorney for petitioner, and Ernest A. Tolin, United States Attorney, by Walter S. Binns, Chief Assistant, appearing as attorneys for respondent Herman R. Landon, District Director of Immigration and Naturalization Service, and said respondent having filed his Return and Supplemental Return to the Writ of Habeas Corpus, and petitioner having filed his Traverse to said Return, and the Court having heard oral argument and considered the Affidavit filed by respondent together with the Return, and having taken evidence as to the progress of the deportation hearings being considered before a hearing officer of the Immigration and Naturalization Service, and petitioner not desiring to submit evidence, the Court makes its findings of fact and conclusions of law.

Findings of Fact

I

That Miriam Christine Stevenson is an alien and a native and subject of Great Britain, born at London, England, on August 26, 1907.

[fol. 177]

II

That petitioner was taken into custody on July 26, 1949, on a warrant of arrest issued by authority of the Attorney General on July 8, 1949, and was released from custody on a bond in the amount of $2,000.00.

III

That, after a hearing on said warrant of arrest, a hearing de novo under the Administrative Procedure Act was ordered as a result of the decision of the Supreme Court in the case of *Sung* v. *McGrath*, 339 U. S. 33.

IV

That on September 26, 1950, the Acting Commissioner of Immigration and Naturalization, Washington, D. C., requested the District Director of Immigration and Naturalization, Los Angeles, California, to submit a report covering all aliens in the Los Angeles District who were currently active members of the Communist Party and who were under deportation proceedings.

V

That on October 6, 1950, the respondent submitted to the Acting Commissioner a report containing summaries of facts as reflected in the confidential and official records of the Government at Los Angeles in the cases of eleven aliens who were currently active members of the Communist Party, and in the cases of eight aliens indicated to be past members of the Communist Party.

[fol. 178]

VI

That on October 21, 1950, the respondent received a radiogram from the Acting Commissioner of Immigration and Naturalization, Washington, D. C., directing him, among other things, to apprehend and detain all active communists

under deportation proceedings in his District. Thereafter, petitioner was re-arrested.

VII

That on October 31, 1950, a new warrant of arrest was issued by authority of the Attorney General charging that petitioner was subject to deportation as a person who had been, after entry into the United States, a member of the Communist Party. That pursuant to said instructions from the Attorney General, deportation hearings in petitioner's case were held on November 30, 1950, and were at that time taken off calendar. The case was next set for hearing on December 6, 1950, on which date it was continued for hearing on December 11, 1950, and again continued to December 14, 1950. On the latter date it was continued to December 15, 1950, at which time it was set for hearing on January 5, 1951, all at the request of petitioner.

VIII

The Acting Commissioner of Immigration was in possession of evidence that said petitioner was a member of the Communist party of the United States as was set forth in the Affidavit filed with the Return, as follows:

[fol. 179] "With respect to Miriam Christine Stevenson, the petitioner herein, the Service is in possession of evidence showing that said petitioner has been a member of the Communist Party of the United States and has actively participated in its program; more specifically, that the petitioner was a Unit Organizer and a member of the Hollywood Subsection Committee of the Communist Party in 1936; that she was the Secretary of a Communist Party Unit in 1938; that she participated in the "Lenin" celebration in Los Angeles; that she admitted in 1948 attending Communist Party meetings and also admitted membership in the American League for Peace and Democracy (an organization designated by the Attorney General as Communist, F.R. 315, No. 231); that she was a correspondent of the People's Educational Center in 1948 (an organization designated by the Attorney General as Communist, F.R. 315, No. 231); and that in 1950 at a deportation hearing she refused to answer questions concerning her mem-

bership in the Communist Party on the ground of self-incrimination."

IX

The Court takes judicial notice that a state of emergency exists and that an undeclared war is being waged in Korea between the Armed Forces of the United States and the armed forces of Communist China.

[fol. 180] CONCLUSIONS OF LAW

I

The Attorney General, through the Immigration and Naturalization Service, has exercised discretion in determining that petitioner Miriam Christine Stevenson, formerly Burroughs, nee Kenkel, alias Miki Ashton, be retained in custody pending deportation.

II

The retention of Miriam Christine Stevenson in custody pending deportation was not arbitrary or capricious.

III

There is substantial evidence to support the decision of the Attorney General, acting through the Immigration and Naturalization Service, to retain petitioner Miriam Christine Stevenson in custody.

IV

Petitioner is not being illegally restrained by respondent but is in custody of respondent under proper and lawful order.

V

The Writ of Habeas Corpus is and should be discharged and dismissed.

(S.) Ben Harrison, United States District Judge.
Dated: January 22, 1951.

Approved as to Form: Rose S. Rosenberg, Attorney for Petitioner.

[fol. 181] [File endorsement omitted.]

[fol. 182] IN THE UNITED STATES DISTRICT COURT IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION

No. 12492-BH

In the Matter of MIRIAM CHRISTINE STEVENSON, Formerly BURROUGHS, nee KENKEL, alias MIKI ASHTON, Petitioner for Writ of Habeas Corpus.

ORDER DISMISSING PETITION FOR WRIT OF HABEAS CORPUS AND DISCHARGING WRIT

The mandate of the Circuit Court of Appeals for the Ninth Circuit was spread in the District Court on December 27, 1950. The Court thereupon, in accordance with the mandate, ordered the issuance of writ of Habeas Corpus directed to Herman R. Landon, District Director of the Immigration and Naturalization Service, United States Department of Justice, Los Angeles, California, and set January 5, 1951 as the return date on the said writ. On said date the Court set the matter for hearing on January 9, 1951, the petitioner being represented by her counsel Rose S. Rosenberg, and the respondent by his counsel Ernest A. Tolin, United States Attorney, appearing by Walter S. Binns, Chief Assistant United States Attorney, and the Court having read the Return and the Traverse on file and the Supplemental Return and having read and considered the Affidavit filed by respondent in addition to the Return and heard arguments, and further proceedings being had January 11, 1951, and the Court having taken evidence as to the [fol. 183] progress of the deportation hearing against Miriam Christine Stevenson, formerly Burroughs, nee Kenkel, alias Miki Ashton, before a hearing officer of the Immigration and Naturalization Service;

And the petitioner personally and by her attorney not desiring to submit evidence;

It is hereby ordered, adjudged and decreed that the petition for writ of habeas corpus herein is dismissed and the Writ of Habeas Corpus issued herein be and hereby is discharged, and the petitioner is remanded to the custody of the Immigration and Naturalization Service of the Department of Justice.

Dated: January 22, 1951.

(S.) Ben Harrison, United States District Judge.

Approved as to form: Rose S. Rosenberg, Attorney for Petitioner. Judgment entered Jan. 2[illegible], 1951, Book 70, Page 382. Edmund L. Smith, Clerk, by (S.) Edw. F. Drew, Deputy Clerk.

[File endorsement omitted.]

[fol. 184] IN UNITED STATES DISTRICT COURT

NOTICE OF APPEAL—January 24, 1951

Notice is hereby given that Miriam Christine Stevenson, petitioner above named hereby appeals to the United States Court of Appeals for the Ninth Circuit, from the order discharging the writ of habeas corpus herein, made and entered in this action by the United States District Court, Honorable Ben Harrison, Judge Presiding, on the 22 day of January, 1951.

Dated: This 24 day of January, 1951.

(S.) Rose S. Rosenberg.

[fol. 185] IN UNITED STATES DISTRICT COURT

STIPULATION AS TO SUPPLEMENTAL RECORD ON APPEAL—Filed January 24, 1951

It is hereby stipulated by and between the undersigned counsel for the petitioner-appellant and for the respondent-appellee herein that the following documents and papers shall constitute the supplemental record on appeal to the United States Court of Appeals for the Ninth Circuit herein:

1. The Writ of Habeas Corpus issued herein on or about January 2, 1951.

2. The Return to Writ of Habeas Corpus of H. R. Landon, respondent herein, together with exhibits attached thereto, executed January 4, 1951.

3. The Traverse to Return to Writ of Habeas Corpus dated January 5, 1951.

4. The Supplemental Return to Writ of Habeas Corpus, together with Amended Affidavit of H. R. Landon attached thereto as Exhibit B.

5. The Amended Supplemental Return to Writ of Habeas Corpus.
6. Reporter's Transcript.
7. Minute Order discharging writ and denying petition entered January —, 1951.
8. Minute order denying application for bail pending appeal, entered January —, 1951.
9. Findings of Fact and Conclusions of Law made Jan-
[fol. 186] uary 22, 1951.
10. Order discharging writ and denying petition, entered January 22, 1951.
11. Notice of appeal dated January 22, 1951.
12. This stipulation.

Dated this 24th day of January, 1951.

(S.) Rose S. Rosenberg, Attorney for Petitioner-Appellant; Ernest A. Tolin, United States Attorney; (S.) Walter S. Binns, Chief Assistant, U. S., Attorney, Attorneys for Respondent-Appellee.

[File endorsement omitted.]

[fols. 187-188] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 189] UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Before Stephens, Healy and Bone, Circuit Judges

ORDER OF SUBMISSION—December 1, 1950

Ordered (1) motions for bail pending appeal (2) that causes be heard on typewritten transcript of record and typewritten briefs, and (3) cause on merits, argued by Mr. John W. Porter, counsel for appellant Carlson, and by Mrs. Rose S. Rosenberg, counsel for appellant Stevenson, and by Mr. John Caughlan, counsel for appellants Mangaoang and Sasieff, and by Messrs. Walter Binns and John E. Belcher, Assistants United States Attorney, and by Mr. John P. Boyd, Special Assistant to the Attorney General, counsel for appellees, and submitted to the court for con-

sideration and decision, counsel for respective parties to file further briefs in five days.

[fol. 190] Before Stephens, Healy and Bone, Circuit Judges

ORDER DIRECTING ENTRY OF JUDGMENT—December 16, 1950

Pursuant to the order this day filed, it is ordered that a judgment be filed and recorded in each of above causes in accordance with the opinion rendered in the companion cause of Frank Carlson vs. Landon, etc., No. 12742; opinion in these causes to follow:

[fol. 191] UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MIRIAM CHRISTINE STEVENSON, etc., Appellant,

vs.

HERMAN R. LANDON, etc., Appellee

JUDGMENT—December 16, 1950

Appeal from the United States District Court for the Southern District of California, Central Division

This cause came on to be heard on the Transcript of the Record from the United States District Court for the Southern District of California, Central Division and was duly submitted.

On consideration whereof, it is now here ordered and adjudged by this Court, that the order of the said District Court in this cause be, and hereby is reversed, and this cause be, and hereby is remanded to the said District Court with directions to the said District Court to take the undenied material allegations of petitioner's answer as true and to give the Director an opportunity to reveal reasons for exercising his discretion, if he did exercise discretion in denying bail, and to take note of facts relating to delays in the deportation hearings, and decide the issue upon such evidence and any other proper evidence which may be offered and received, all in conformity with the opinion of this court in Case No. 12742.

(Endorsed) Ju .gment. Filed and entered December 16, 1950. Paul P. O'Brien, Clerk,

[fol. 192] UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Before Stephens, Healy and Bone, Circuit Judges

ORDER DIRECTING FILING OF OPINION—December 20, 1950

Ordered that the typewritten opinion this day rendered by this Court in above causes be forthwith filed by the Clerk.

[fol. 193] IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 12,743

MIRIAM CHRISTINE STEVENSON, Formerly Burroughs, nee Kenkel, Alias Miki Ashton, Appellant,

vs.

HERMAN R. LANDON, District Director of the Immigration and Naturalization Service, United States Department of Justice, Appellee

No. 12,744

DAVID HYUN, Appellant,

vs.

HERMAN R. LANDON, District Director of the Immigration and Naturalization Service, United States Department of Justice, Appellee

No. 12,745

Dec. 20, 1950

HARRY CARLISLE, Also Known as Harry Carlyle, Appellant,

vs.

HERMAN R. LANDON, District Director of the Immigration and Naturalization Service, United States Department of Justice, Appellee

Appeal from the United States District Court for the Southern District of California, Central Division

OPINION—December 20, 1950

Before Stephens, Healy and Bone, Circuit Judges

STEPHENS, Circuit Judge:

The appeals in the above entitled cases were decided and order entered on the 16th day of December, 1950, coincident

[fol. 194] with the decision and order in a like proceeding entitled *Carlson v. Landon*, No. 12,742. We noted in our memorandum, filed on the same date, that opinion in each case would follow. We combine the three in one opinion. The facts in each of the instant cases very largely parallel those set out in the *Carlson* case. The dates of the essential facts are not exactly the same in either case, but the variation of events and the dates of their happening are not great enough to make any particular difference. The applicable law, the principles applied and the reasoning and authority relied upon and set out in the *Carlson* case rule these cases and therefore we make specific reference thereto without repetition herein. The following alleged facts, undenied in the pleadings, are set out under the names of the three petitioners. Details as to each petitioner are set out in the petitions and we state their essence very briefly:

STEVENSON

Petitioner Stevenson was born in England in 1919. At the age of 12 years she was taken to Canada with her family. She entered the United States in 1923 and since has resided in Los Angeles, California. With her mother she visited Canada in 1928 for a few hours and later in the same year she went to Mexico for a few hours where she was married to a United States citizen. In 1929 she made inquiry of the Immigration and Naturalization Service as to applying for citizenship but her legal entrance into this coun[illegible] was questioned.

HYUN

The petition for Hyun sets out a seemingly long period of limited restraint under a bail bond given under an arrest for deportation prior to the amendment to the immigration laws by the Internal Security Act of 1950, and complete restraint without bail since October 21, 1950, under an arrest for deportation pursuant to such amendment.

Petitioner Hyun was born in Seoul, Korea; is 33 years of age; was taken to Hawaii at an early age and resided there until December, 1947. His schooling resulted in a bachelor of science degree. In school he appears to have been a leader in social and religious activities. Although disqualified for military service during the lafe war because of his status as an alien, he became Captain of Reserve Officers Training

[fols. 195-224] Corps at the University of Hawaii. He has applied for citizenship; is married and has two minor sons. He has resided in Los Angeles, California, since December, 1947, and has engaged in a useful occupation. Petitioner's petition is replete with a detailed account of his life. He denies that his release would be detrimental to the United States in any manner.

CARLISLE

The petitioner Carlisle was born in England in 1897 and has resided in Los Angeles, California, for the past 15 years. The orders in these cases dated December 16, 1950, are alike and are the same as in *Carlson* v. *Landon*, No. 12,742, 9 Cir., . . F.2d . . . . The text of the orders is repeated, to-wit:

The judgment is reversed and the cause is remanded with direction to the district court to take the undenied material allegations of petitioner's answer as true and to give the Director an opportunity to reveal reasons for exercising his discretion, if he did exercise discretion in denying bail, and to take note of facts relating to delays in the deportation hearings, and decide the issue upon such evidence and any other proper evidence which may be offered and received, all in conformity with this opinion.

Reversed and remanded.

(Endorsed:) Opinion. Filed Dec. 20, 1950. Paul P. O'Brien, Clerk.

[fol. 225] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION

No. 12505-Y

In the Matter of the Application of DAVID HYUN for a Writ of Habeas Corpus

DAVID HYUN, Petitioner,

vs.

H. R. LANDON, Respondent

PETITION FOR WRIT OF HABEAS CORPUS—Filed November 3, 1950

This petition is made by Mary Hyun, for and on behalf of her husband, David Hyun, hereinafter referred to as "Petitioner", for an application for a Writ of Habeas Corpus in his favor and on his behalf. In support of this application the Petitioner respectfully represents as follows:

I

Petitioner is at present imprisoned, detained, confined and restrained of his liberty and is being held without bail at Terminal Island, California by direction of H. R. Landon, District Director for Southern California of the Immigration and Naturalization Service of the United States [fol. 226] Department of Justice who at all times herein mentioned and is now acting as agent and for and on behalf of Howard McGrath, Attorney General of the United States. For this reason this petition is made and filed by Mary Hyun the Petitioner's wife.

II

The said imprisonment, detention, confinement and restraint are illegal for the reasons and on the grounds hereinafter stated.

III

On or about July 9, 1949 W. F. Kelly, Assistant Commissioner, Enforcement Division, United States Department of Justice, Washington, D. C. issued a warrant for the arrest of Petitioner for alleged violation of the Act of

October 16, 1918, as amended, in that he was an alien allegedly after entry and a member of the classes set forth in Section 1 of said Act. Said warrant for arrest also authorized the release of Petitioner under bond in the sum of $2000. Under said warrant Petitioner was arrested on or about July 25, 1949. Pursuant to the said authorization for release, he was released after arrest by furnishing bond as aforesaid on or about July 25, 1949 but conditioned upon his reporting in Los Angeles to a specified representative of said Service once weekly.

IV

Thereafter and on August 4, 1949 a hearing before the Immigration and Naturalization Service of the Department of Justice in the District of Los Angeles was scheduled. At that time Petitioner appeared and requested a continuance for the purpose of obtaining counsel. Thereafter and on August 15, 1949 a hearing was held before a Hearing Inspector for the said Service. At that time Petitioner was present. Thereafter and on August 25, 1949 a further hearing was held before an Inspector for said Service at which time again Petitioner was present. Over objections of Petitioner and his counsel said Service then scheduled further hearings for Honolulu, Territory [fol. 227] of Hawaii commencing January 9, 1950. Thereafter and on February 21, 1950 Petitioner was advised by said Service that the hearing scheduled for Honolulu had been indefinitely postponed. Thereafter and on March 28, 1950 Petitioner was advised that a further hearing was scheduled pursuant to the said warrant of arrest and charges contained therein for Los Angeles on April 10, 1950. Thereafter and on March 30, 1950 Petitioner was again advised that the scheduled hearing for April 10, 1950 had been cancelled. Thereafter and on May 15, 1950 Petitioner was advised that another hearing pursuant to said warrant of arrest and charges contained therein was scheduled in Los Angeles on June 13, 1950. Thereafter and on June 13, 1950 a further hearing was held before a Hearing Examiner for said Service at which time Petitioner was present. At the conclusion of said hearing the Hearing Examiner stated that there would be a further hearing to be scheduled before the Examining Inspector at a time to be determined by the Service and counsel for Petitioner

and at which time arguments on Petitioner's objections to the transfer of a further hearing to Honolulu would be made. Thereafter and on August 4, 1950 the Examining Officer for the Service and counsel for petitioner entered into a written stipulation by the terms of which any further hearing for the purpose of arguing the said objection to the transfer of the hearing to the Territory of Hawaii was cancelled, and the said objections were thereafter pursuant to said stipulation filed in writing with the Hearing Examiner. No further hearings have been scheduled since that date, and none is now scheduled. The hearing in Honolulu has not yet been scheduled for a date. The case of the United States against Petitioner has not been completed, nor has Petitioner yet presented his defense.

Following the arrest of Petitioner pursuant to said warrant on or about July 25, 1949, and his release on or about the same date under bond in the sum of $2000 conditioned upon his reporting at a certain time and place in the City of Los Angeles each and every week pending the final de- [fol. 228] termination of the deportation proceedings to a representative of said Service, Petitioner immediately thereafter did report weekly as required. Thereafter and on or about August 8, 1949 Petitioner was advised in writing by said Service that the reporting time was forthwith changed from weekly to monthly. Thereafter and continually since that date Petitioner has reported monthly on each and every date when required so to do to a representative of said Service in Los Angeles. On or about July 6, 1950 counsel for Petitioner requested the Respondent to eliminate the requirement of Petitioner's reporting monthly, weekly or at all as a condition of the said $2000 bond. Counsel was asked by said Director to refer said request to the Commissioner of Immigration and Naturalization Service in Washington, D. C. On or about July 12, 1950 said request was made in writing to the said Commissioner with a copy being forwarded to the Respondent. On or about *September 14, 1950* Petitioner through his said counsel received a written reply to said request of July 12, 1950 seeking to eliminate the reporting qualification of the bond. The said written response was signed by A. R. Mackey, Acting Commissioner. The said reply refused to grant the request for Petitioner to be relieved of his obliga-

tion to report periodically. The said written reply further stated as follows:

> "However, in view of your allegation that the requirement for reporting personally interferes with Mr. Hyun's employment, I suggest that you pursue this matter further with the District Director of this Service at Los Angeles. He may be able to work out a plan whereby the periodic report may be made in a manner or at a place more convenient to your client."

Petitioner was about to take up with the Los Angeles District Director such a plan when Petitioner was imprisoned and detained as hereinafter set forth.

[fol. 229]

V

At midnight on Saturday, October 21, 1950 Petitioner was arrested by direction of the Respondent and has been since that time continually in the custody of Respondent at Terminal Island, San Pedro, California where he is now imprisoned and detained without the right to post bond for his release.

VI

On October 25, 1950 Petitioner filed a Writ of Habeas Corpus in the above entitled Court as number 12461-C. Thereafter and on October 31, 1950 Respondent issued a new warrant for the arrest of Petitioner, which warrant was served upon Petitioner in the Federal Building at Los Angeles, California while Petitioner was still imprisoned and detained by and in the custody of the Respondent. The said warrant of arrest expressly set forth that it superseded the said warrant of arrest referred to in Paragraph III hereof, which previous warrant had been issued on July 9, 1949, pursuant to which Petitioner was arrested on or about July 25, 1949. The said warrant of arrest served on October 31, 1950 also expressly states that Petitioner is not to be enlarged on bail or otherwise.

VII

Petitioner is 33 years of age. He was born in Seoul, Korea. In May, 1924 at the age of 7 he was taken by his mother and father to the Territory of Hawaii where he continually resided without interruption from that date

until on or about December 3, 1947. In Hawaii he attended elementary and highschools and graduated from the University of Hawaii with a degree of Bachelor of Science in mathematics and physics in 1940. During his attendance at Kauai High School he was president of the Interscholastic Conference, which was a Conference covering the Territory of Hawaii. He was also editor of the High School Annual, an annual publication. He was also elected to represent the Koreans attending Kauai High School as a delegate to Y.M.C.A., church and student conferences. During his [fol. 230] last year at Kauai High School Petitioner worked for Kauai Telephone Company and the Electric Shop of Kauai as a telephone operator, among other jobs, by which he was able to earn some income. While in attendance at the University of Hawaii he was refused admission to a Reserve Officers Training Corps course for the reason that he was an alien. He nevertheless at his own expense took a course in this subject and became a captain of his company in the Reserve Officers Training Corps regiment of the University. At the University, he was elected into membership of the Engineers Club and as President of the Bhack Yong Whay fraternity. After graduation in 1940 he was engaged as a draftsman by W. A. Ramsey, Ltd., a sales engineering firm in Hawaii. During that same year he was elected Secretary of the Korean University Club. Also in 1940 he volunteered for service in the United States Army by registering under the Selective Service and Training Act of 1940, but was rejected because of his status as an alien. He never sought a deferment from service. While employed for W. A. Ramsey he spent virtually all of his time on vital defense work for Ramsey on behalf of the United States Army and Navy. Either in 1940 or 1942 he took out and filed in Hawaii his first United States citizenship papers in the hope that the law might change and permit him even as a Korean to become a United States citizen. Approximately four years ago he applied again for United States citizenship under what he believed was a new law which might permit him, as a Korean to become a citizen. On December 16, 1941 he became married to said Mary Hyun, a United States citizen by virtue of her birth in Hawaii, with whom he has had and now has two sons, aged 7 and 4.

In Hawaii after December 7, 1941 all aliens, including Petitioner, were subject to technical restrictions such as

curfew. Nevertheless, in 1942 Petitioner was given permission prior to the Battle of Midway and thereafter to serve as an air raid warden, and he did so serve. He also served in the Hawaiian Defense Volunteers which was a civilian [fol. 231] organization organized on a volunteer basis to aid the United States Army. From 1942 until 1946 he was employed as a Civil Service employee by the United States Engineers Corps engaged in vital work for the military service. He resigned to work as a draftsman for Guy N. Rothwell, architect in Hawaii, until Petitioner left for the Mainland. While in Hawaii Petitioner was a member of the Korean Methodist Church, of which his father for many years past and until he retired in 1940 was the Minister. He was also a member of the Korean Golf Club.

VIII

Petitioner, his wife and their two children arrived in Los Angeles from Hawaii on or about December 3, 1947. Shortly thereafter they rented premises at 3405 Marathon Street, Los Angeles, where they have been continually since that date and are now residing. Immediately adjacent to his home is the residence of the mother and father of Petitioner who have also continually resided there even prior to December 3, 1947. During 1948 and 1949 Petitioner attended the University of Southern California for three semester terms and for one summer term on a part time basis. Shortly after his arrival at Los Angeles he became employed as a draftsman for an architect for approximately one year, after which he was employed as a draftsman by A. Quincy Jones, Jr., licensed architect, for whom he has been continually since that date and is now employed. Petitioner took the California State Board architects' written and oral examinations and passed them. Subsequently and in April, 1950 he was issued his certificate as a licensed architect by the State of California, which license he now has.

IX

Since the outbreak of the Korean conflict on or about June 25, 1950 Petitioner has made no public utterances whatsoever concerning his opinion of the announced positions and policies of the United States or the Soviet Union or any other country which has expressed a position or [fol. 232] policy concerning the Korean conflict, notwith-

standing that Petitioner believes he would have a constitutional right so to do. Petitioner has at all times, and particularly since the warrant of arrest was served upon him on or about July 25, 1949, conducted himself in a lawful and respectful manner and as a loyal and peaceful citizen of this community and these United States. He has never been, except for the said warrant of arrest by said Service, charged or arrested for any crime or infraction of law whatsoever, except for minor traffic violations. Continually during the year last past Petitioner has been not only engaged for 8 hours each day for 5 days each week in his employment as a draftsman and later as an architect by A. Quincy Jones, Jr., but has spent a large amount of his time in other activities in connection with his profession. The Architects' Board examinations were given sometime in December, 1949. Petitioner together with other students starting in September and continually until the examination in December, 1949 took a course from an instructor in the downtown area of Los Angeles designed to prepare such students for the examinations. This course he attended 3 evenings each week. On at least 2 or 3 other evenings during that period he and other students had discussion groups for the purpose mutually of assisting each other to prepare for the examinations. After the examinations in December and until about April, 1950 he was engaged on some evenings in designing three separate residential buildings and also an addition to another residentjal building. After April, 1950 Petitioner began to spend the early portion of at least several evenings each week and most Saturdays and Sundays finishing up the design and physically assisting in the construction of an addition to a residential building in Los Angeles. Also for six or eight weeks after April, 1950 Petitioner took an additional course in engineering from the same instructor who taught him prior to the examinations in Los Angeles. This course he attended twice a week. He also spent a portion of other evenings during this period studying for this course.

[fol. 233] Since the said warrant of arrest was served upon Petitioner on or about July 25, 1949 and until his arrest on October 21, 1950 his general activities, demeanor and conduct have been substantially the same except that during the last year he has spent extra time as hereinabove set forth in connection with preparing for his examinations

and in engaging in outside work in his profession. Petitioner has neither said nor done anything, nor acted in any way whatsoever so as to form a reasonable or probable basis to cause him at this time to be arrested and imprisoned without the privilege of being enlarged on bond, or so as to indicate or tend to indicate that he would be, if he were free on bail, either a danger or a threatened danger to the safety of the public or of any person or to the security of this community or the United States.

X

Since the said warrant of arrest was served on or about July 25, 1949 Petitioner has not been served or otherwise notified in any way whatsoever by either the Respondent or his representatives or by any other governmental agency or by any other person or party that anything he was doing or saying or any other activity in which he has been or was then engaged would or might subject him to further arrest or detention in the manner in which he was so arrested and detained on or about October 21, 1950. Prior to his arrest at midnight on October 21, 1950 Petitioner was given no notice until the time he was actually arrested that he would be so arrested, nor was he given any opportunity whatsoever to show cause why he should not be so rearrested or be held without the privilege of supplying bond for his release. Until November 1, 1950 Petitioner had not been supplied or informed by the Respondent or anyone else of the reasons or basis for his rearrest at midnight on October 21, 1950, or for his imprisonment or detention without bail. On November 1, 1950 Respondent filed in the above entitled Court a supplemental return to the order to show cause why a writ of habeas [fol. 234] corpus should not be granted in the aforementioned case No. 12461-C. In paragraph III of said return Respondent states: "There is reasonable cause to believe that if the said Petitioner were enlarged on bail he would engage in activities which would be prejudicial to the public interest, and would endanger the welfare and safety of the United States." What past activities form the basis for this legal conclusion, or what sort of activities are allegedly anticipated are not set forth either in general terms or specifically. In fact, the language hereinabove quoted from paragraph III of the said supplemental return is the only statement of any kind referring to an alleged basis for rearresting without notice or hearing and holding Petitioner

without bail. As recently as on or about October 8, 1950 Petitioner reported as per the Respondent's requirement to a representative of Respondent in Los Angeles and at said time, Mary Hyun is informed and believes from what Petitioner told her and on that ground alleges that, he was told nothing whatsoever to advise or indicate to him that he would be rearrested or that there was any cause or basis for said rearrest or his being held thereafter without the opportunity of posting bond for his release.

XI

The rearrest of Petitioner on October 21, 1950 and his second rearrest while still under imprisonment and detention by and custody of the Respondent and Petitioner being held without the right to post bail for his release are illegal and unconstitutional for the reasons hereinbelow set forth:

A. Section 23(a) of the Internal Security Act of 1950 which amends Section 20(a) of the Immigration Act of February 5, 1917, as amended (39 Stat. 890; 57 Stat. 553; 7 U.S.C. 156) under which Petitioner's detention and confinement is made does not apply to Petitioner nor to any alien who previously to the passage of said Act has been arrested pursuant to warrant and was on the date of the passage of said Act already released on bond.

[fol. 235] B. Section 23(a) of said Act as applied to Petitioner by the Respondent is unconstitutional because it violates Petitioner's rights under the First and Fifth Amendments to the United States Constitution.

C. Even if said Act is applicable to Petitioner and is otherwise constitutional, Respondent has abused the discretion granted to him thereunder and has exercised it unreasonably, arbitrarily and capriciously since no reasonable investigation was made prior to arrest to determine if there were a lawful basis for such arrest; and Respondent has failed to consider (1) the probability of the unconstitutionality not only of the Internal Security Act of 1950 but also the Act of October 16, 1918 as amended, under which Petitioner is now charged and said deportation proceedings were begun, (2) whether or not there is any probable danger or threatened danger to the public safety by Petitioner's presence within the community based upon anything which Petitioner has said or done, (3) the likely availability of

Petitioner for subsequent proceedings if he were to be enlarged on bail, or (4) the hardship not only upon Petitioner but upon his family as a necessary result of such detention and imprisonment without bail.

D. Service of the Warrant of arrest upon Petitioner on October 31, 1950 while he was under arrest by and in the custody of Respondent makes the said warrant and arrest and detention thereunder void and of no effect.

XII

At the first hearing on the petition for writ of habeas corpus in the above mentioned matter immediately following the arrest of petitioner pursuant to the warrant of October 31, 1950 Petitioner moved to dismiss without prejudice said petition for a writ on the ground that said petition had become moot. The motion to dismiss was granted without any ground therefor or qualification thereof being stated. Thereafter an order of dismissal was filed in said case.

[fols. 236-237] Wherefore, your Petitioner prays that a writ of habeas corpus may be issued directed to H. R. Landon, Los Angeles District Director for Los Angeles of the Immigration and Naturalization Service, United States Department of Justice; to the United States Marshal for this District; and to any and all other law enforcement or peace officers who may have custody of Petitioner, commanding them, and each of them, to have the Petitioner before this Court at a time and place therein specified to do and receive what shall then and there be considered by said court concerning Petitioner so restrained, the cause of his detention, and said writ; that Petitioner may be restored to his liberty upon posting the same bond in the sum of $2000 which has heretofore been posted and which is still in Respondent's possession; and for such other and further relief as to this Honorable Court may seem proper in the premises.

Mary Hyun, for and on behalf of David Hyun, Petitioner.

Milton S. Tyre, Attorney for Mary Hyun and Petitioner, David Hyun.

[fol. 238] [File endorsement omitted]

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION

[Title omitted]

ORDER TO SHOW CAUSE WHY WRIT OF HABEAS CORPUS SHOULD NOT BE GRANTED—November 3, 1950

Upon reading the verified petition for a writ of habeas corpus on file herein, and it appearing therefrom to the Court that this is a proper instance for the following order, and good cause appearing therefor;

It is hereby ordered that H. R. Landon, District Director for Los Angeles of United States Immigration and Naturalization Service, Department of Justice, be and appear before Honorable Ben Harrison, Judge in Department 6 on the 6th day of November, 1950, at 2:00 P.M. of said day, then and there to show cause, if any he may have, why a writ of habeas corpus should not be granted restoring Petitioner [fols. 239-240] David Hyun to his liberty upon posting with the Respondent a bond in the same form as previously posted by him with you or your representative in the sum of $2000, or, if said bond has not been revoked or exonerated, why the same bond should not be deemed posted and continuing in effect, or on such other conditions as to this Court may seem proper in the premises.

Dated: November 3rd, 1950.

Ben Harrison, Judge.

[fol. 241] [File endorsement omitted]

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION

[Title omitted]

RETURN TO ORDER TO SHOW CAUSE WHY WRIT SHOULD NOT BE GRANTED—Filed November 6, 1950

I, Herman R. Landon, District Director of the Immigration and Naturalization Service, United States Department of Justice, Los Angeles, California, respondent herein, as and for my return to order to show cause why writ of

habeas corpus should not be granted in the above entitled case, respectfully states:

I

That David Hyun, hereafter referred to as the petitioner is not being illegally restrained by me of his liberty, but is in my custody under proper and lawful authority.

II

That the said petitioner is in my custody pursuant to a warrant of arrest, dated October 31, 1950, issued by authority of the Attorney General, directing that the petitioner [fol. 242] be taken into custody and granted a hearing to enable him to show cause why he should not be deported in conformity with law, a certified copy of which is attached hereto as a part of this return and marked Exhibit "A."

III

That there is reasonable cause to believe that if the said petitioner were enlarged on bail he would engage in activities which would be prejudicial to the public interest, and would endanger the welfare and safety of the United States.

Wherefore, I, Herman R. Landon, District Director, Immigration and Naturalization Service, United States Department of Justice, pray that the said petition for issuance of a writ of habeas corpus in the case of the petitioner be denied.

Herman R. Landon, District Director, Immigration & Naturalization Service, United States Department of Justice, District No. 16.

[fol. 243] *Duly sworn by Herman R. Landon. Jurat omitted in printing.*

[fol. 244] ACKNOWLEDGMENT OF SERVICE

Receipt is hereby acknowledged this 6th day of November, 1950, of a copy of the Return to Order to Show Cause Why Writ of Habeas Corpus Should not be Granted, in the above-entitled and numbered case.

Milton S. Tyre, Attorney for Petitioner, By B. Shapiro, Secretary.

[fol. 245] EXHIBIT "A" TO RETURN

United States of America

Department of Justice

Immigration and Naturalization Service

Los Angeles, California

November 6, 1950.

Certification

By virtue of the authority vested in me by 8 C.F.R. 383.7, a regulation issued by the Commissioner of Immigration and Naturalization with the approval of the Attorney General pursuant to 5 U.S.C. 22 and 311, and 8 U.S.C. 102, 222, 458 and 727,

I hereby certify that the annexed document, a Warrant of Arrest, is a true copy of the original thereof from the records of the said Immigration and Naturalization Service, Department of Justice, relating to David Hyun, File No. 1600-61258, of which the Attorney General is the legal custodian.

In Witness Whereof I have herennto set my hand and caused the seal of the Department of Justice, Immigration and Naturalization Service, to be affixed, on the day and year first above written.

Herman Landon, District Director, Immigration and Naturalization Service. (Seal.)

[fols. 246-247] Warrant for Arrest of Alien

United States of America

Department of Justice

Los Angeles, Calif.

1600-61258

No. A-3611569

To District Enforcement Officer, Los Angeles, California
Or to any Immigrant Inspector in the service of the United States.

Whereas, from evidence submitted to me, it appears that the alien, David Hyun, who entered this country at Honolulu, T. H. ex SS. "President Cleveland" on the 24th day of May, 1924 has been found in the United States in violation of the immigration laws thereof, and is subject to be taken into custody and deported pursuant to the following provisions of law, and for the following reasons, to wit:

The Act of Oct. 16, 1918, as amended, in that he has been, after entry, a member of the following class set forth in Section 1(2)(C) of said Act: An alien who was a member of the Communist Party of the United States.

I, by virtue of the power and authority vested in me by the laws of the United States, hereby command you to take into custody the said alien and grant him a hearing to enable him to show cause why he should not be deported in conformity with law. The expenses of detention, hereunder, if necessary, are authorized payable from the appropriation "Salaries and Expenses, Immigration and Naturalization Service, 1951."

Pending determination of deportability, the alien named is to be continued in custody. This warrant supersedes that issued on the 7th day of July, 1949.

For so doing, this shall be your sufficient warrant.
Witness my hand and seal this 31st day of October, 1950.

(S.) H. R. Landon, District Director.

[fol. 248] [File endorsement omitted]

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION

[Title omitted]

TRAVERSE TO RETURN TO ORDER TO SHOW CAUSE WHY WRIT SHOULD NOT BE GRANTED—Filed November 6, 1950

David Hyun, the petitioner in the above entitled matter, hereby files his traverse to the return to order to show cause why writ should not be granted, which return was executed by the Respondent in the above entitled matter and served upon counsel for Petitioner on November 6, 1950.

I

Petitioner denies that he is being legally restrained of his liberty, and further denies that he is in the custody of the Respondent under proper and lawful authority, and in this connection alleges that he is in custody of the Respondent [fols. 249-250] but under improper and unlawful authority.

II

Petitioner further denies the alleged allegations contained in Paragraph III of the said return, and in this connection alleges that there is no danger, either probable or threatened, to the public safety by Petitioner being enlarged upon bail.

Wherefore, Petitioner prays that the application heretofore filed in the above matter be granted.

David Hyun, Petitioner.

Duly sworn to by David Hyun. Jurat omitted in printing.

[fol. 251] UNITED STATES DISTRICT COURT, CENTRAL DIVISION, SOUTHERN DISTRICT OF CALIFORNIA

12505-Y

WRIT OF HABEAS CORPUS

The President of the United States of America

To: H. R. Landon, District Director of the Immigration and Naturalization Service, Los Angeles, California—Greeting:

You are hereby commanded, that the body of David Hyun by you restrained of his liberty, as it is said detained by whatsoever names the said David Hyun may be detained, together with the day and cause of his being taken and detained, you have before the Honorable Ben Harrison, Judge of the United States District Court in and for the Southern District of California, at the court room of said Court, in the City of Los Angeles at 10:00 o'clock a.m., on the 5th day of January, 1951, then and there to do, submit to and receive whatsoever the said Judge shall then and there consider in that behalf; and have you then and there this writ.

Witness the Honorable Ben Harrison, United States District Judge at Los Angeles, California this 2nd day of January, A. D. 1951.

Edmund L. Smith, Clerk. By Murray E. Wire, Deputy Clerk. (Seal.)

[fol. 252] United States Marshal's Return

So. District of Calif., ss:

Received the within writ the 3 day of Jan., 1951, and executed same.

Serving H. R. Landon by leaving writ with Mr. H. A. Field, Room #631, Fed. Bldg., L. A.

James J. Boyle, U. S. Marshal, by Travis F. Oltman, Deputy Marshal.

Marshal's Fee—$2.00.

[fol. 253] [File endorsement omitted]

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION

No. 12505-BH

[Title omitted]

RETURN TO WRIT OF HABEAS CORPUS—Filed January 4, 1951

I, Herman R. Landon, District Director of the Immigration and Naturalization Service, United States Department of Justice, Los Angeles, California, respondent herein, as and for my return to writ of habeas corpus in the above entitled case, respectfully state:

I

That David Hyun, hereafter referred to as the petitioner, is not being illegally restrained by respondent of his liberty, but is in respondent's custody under proper and lawful authority.

II

That the said petitioner is an alien, who was born at Seoul, Korea on or about January 3, 1917 and entered the United States as a citizen of China.

III

That a warrant for the said petitioner's arrest was issued by authority of the Attorney General on July 7, 1949, charging that he was subject to deportation under the Act of October 16, 1918, as amended (8 USC 137), a certified copy of which warrant of arrest is attached hereto as a part [fol. 254] of this return and marked Exhibit "A."

IV

That the said petitioner was taken into custody on the aforesaid warrant of arrest on July 25, 1949, and on the same date was released from custody on a delivery bond in the sum of $2,000.

V

That, after a hearing on said warrant of arrest, to give said petitioner an opportunity to show cause why he should

not be deported, a hearing de novo under the Administrative Procedure Act was ordered as a result of the decision of the Supreme Court in the case of *Sung* v. *McGrath*, 339 U.S. 33.

VI

That on September 26, 1950, the Acting Commissioner of Immigration and Naturalization, Washington, D. C., requested the District Director of Immigration and Naturalization, Los Angeles, California, to submit a report covering all aliens in the Los Angeles District who were currently active members of the Communist Party and who were under deportation proceedings on charges under the Act of October 16, 1918, as amended (8 USC 137).

VII

That on October 6, 1950, the District Director of Immigration and Naturalization, Los Angeles, California, submitted to the Acting Commissioner of Immigration and Naturalization, Washington, D. C., a report containing summaries of facts as reflected in the confidential and official records of the Government at Los Angeles in the cases of eleven aliens indicated to be currently active members of the Communist Party, and in the cases of eight aliens indicated to be past members of the Communist Party, all of whom were the subjects of pending deportation proceedings under the Act of October 16, 1918, as amended (8 USC 137), which report recited facts tending to establish that the aforesaid petitioner was one of the said eleven currently active members of the Communist Party, some of which facts are recited in respondent's affidavit which is attached hereto as a part of this return and marked Exhibit "B."

VIII

[fol. 255] That on October 21, 1950, the following instructions were received by the District Director of Immigration and Naturalization, Los Angeles, California, by radio from the Acting Commissioner of Immigration and Naturalization, Washington, D. C.:

> "Apprehend immediately and detain the following aliens pursuant to Section Twenty of Nineteen Seventeen Act as amended by Internal Security Act: David Hyun and Harry Carlisle and Solomon Sokolnick. Also

apprehend and detain all active Communists under proceedings in your District unless detention would result in severe hardship because of individual's physical condition or family situation. Give priority to those named."

IX

That pursuant to the aforesaid instructions the petitioner was taken into custody on October 21, 1950, on the aforesaid warrant of arrest issued on July 7, 1949.

X

That on October 27, 1950, the following radiogram was received by the District Director of Immigration and Naturalization, Los Angeles, California, from the Acting Commissioner of Immigration and Naturalization, at Washington, D. C.:

"For your information and that of United States Attorneys and aliens and their Attorneys the instruction to you of October Twenty First to take into custody and detain the alien Communists was issued only after the cases had been examined in the light of the Internal Security Act of Nineteen Fifty and the spirit of intention thereof and all of the factors concerning the likelihood of the deportability and the activities of said alien had been given careful consideration as well as the factors of undue hardship which continued detention might impose Stop As you have already been instructed the hearings and steps towards disposition of these cases [fol. 256] are to be given top priority Stop Also as you have been advised these aliens were ordered detained by authority of the Attorney General delegated to me by Section Nine Zero Point One of Title Eight CFR Paren Twelve FR Five Zero Seven Two July Thirty One Nineteen Forty Seven Paren under Section Thirty Seven of the Alien Registration Act of Nineteen Forty Comma Eight USC Four Five Eight."

XI

That on October 31, 1950, while the said petitioner continued in custody under the warrant of arrest issued on July 7, 1949, a new warrant of arrest was issued by authority of the Attorney General charging that he was subject

to deportation under the Act of October 16, 1918 (8 USC 137) as amended by the Internal Security Act of 1950, and served upon the said petitioner, which said warrant of arrest of October 31, 1950, superseded the said warrant of arrest issued on July 7, 1949; a copy of which said warrant of arrest of October 31, 1950, is attached hereto as a part of this return and marked Exhibit "C".

XII

That pursuant to outstanding instructions from the Acting Commissioner of Immigration and Naturalization, Washington, D. C., the case of petitioner, as other deportation cases under the Act of October 16, 1918, as amended (8 USC 137), has been given first priority in expediting hearing, to the end that the said case may be disposed of as speedily as possible, the status of which hearing is recited in more detail in respondent's affidavit which is attached hereto as a part of this return and marked Exhibit "B".

XIII

That the Acting Commissioner of Immigration and Naturalization, Washington, D. C., acting for the Attorney General, has exercised the grant of statutory discretion in Section 20 of the Immigration Act of 1917 (8 USC 156), as amended by the Internal Security Act of 1950, to take the said petitioner into custody and to continue him in custody without bond pending final determination of his deportability, and in exercising said discretion to detain the said [fol. 257] petitioner without bond the Acting Commissioner of Immigration and Naturalization, Washington, D. C., has carefully considered facts which in his judgment establish that the said petitioner is a currently active member of the Communist Party engaged in the execution of the program of the Communist Party, the central purpose of which is to subvert the existing Government of the United States indirectly by espionage and sabotage and directly by force and violence and to substitute a totalitarian dictatorship committed to the destruction of individual liberty and private property; and that, moreover, said facts cause the said Acting Commissioner to believe that if the said petitioner were enlarged on bail he would engage in activities which would be prejudicial to the public interest, and would endanger the welfare and safety of the United States—which

findings the said Acting Commissioner has communicated to respondent on the basis of facts which the respondent has communicated to the said Acting Commissioner, tending to establish the said petitioner's current affiliation with and activity on behalf of the Communist Party, as recited herein.

Wherefore, I, Herman R. Landon, District Director, Immigration and Naturalization Service, United States Department of Justice, pray that the Writ of Habeas Corpus be dismissed.

Herman R. Landon, District Director, Immigration & Naturalization Service, United States Department of Justice, District No. 16.

[fol 257a] EXHIBIT "A" TO RETURN

Warrant for Arrest of Alien

United States of America

Department of Justice

Washington

1600-61258
No. A-3611569
To District Director of Immigration and Naturalization, Los Angeles, California

Or to any Immigrant Inspector in the service of the United States.

Whereas, from evidence submitted to me, it appears that the alien, David Hyun, who entered this country at Honolulu, T.H. ex SS "President Cleveland" on the 24th day of May, 1924, has been found in the United States in violation of the immigration laws thereof, and is subject to be taken into custody and deported pursuant to the following provisions of law, and for the following reasons, to wit: The Act of October 16, 1918, as amended, in that he was, after entry, a member of the following class, set forth in Section 1 of said Act: An alien who is a member of an organization, association, society, or group that ad-

vises, advocates, or teaches the overthrow, by force or violence of the Government of the United States; and the Act of October 16, 1918, as amended, in that he was, after entry, a member of the following class, set forth in Section 1 of said Act: An alien who is a member of an organization, association, society, or group that writes, circulates, distributes, prints, publishes, or displays any written or printed matter advising, advocating or teaching the overthrow, by force or violence, of the Government of the United States.

I, by virtue of the power and authority vested in me by the laws of the United States, hereby command you to take into custody the said alien and grant him a hearing to enable him to show cause why he should not be deported in conformity with law. The expenses of detention, hereunder, if necessary, are authorized payable from the appropriation "Salaries and Expenses, Immigration and Naturalization Service, 1950." Authority has been granted for release under bond in the sum of $2000.

For so doing, this shall be your sufficient warrant.

Witness my hand and seal this 7th day of July, 1949.

(S.) W. F. Kelly, Assistant Commissioner, Enforcement Division.

dmg.

[fol. 258] EXHIBIT "B" TO RETURN

In the United States of America—Southern District of California, Central Division

STATE OF CALIFORNIA,
County of Los Angeles, ss:

Comes now Herman R. Landon, respondent herein, who states and deposes, as follows:

I. That he is District Director for the United States Immigration and Naturalization Service, Department of Justice, for the Los Angeles District, and as such is custodian of the records of the United States Immigration and Naturalization Service in said district.

II. That with respect to David Hyun, the petitioner herein, the Service is in possession of evidence showing that said petitioner has been a member of the Communist

Party and has actively participated in its program; more specifically, that said petitioner was a member of the Communist Party in the Territory of Hawaii and was instrumental in reactivating the Communist Party in Hawaii in 1945; that he was a member of the Executive Board of the Communist Party in Hawaii in 1946; that he led and participated in discussion groups on indoctrination of Communist philosophy, planning, strategy, and recruitment of members in the Communist Party during the years 1946 and 1947; that he advocated re-distribution of wealth and Government ownership of industry, such as exists in Russia, and that these reforms would take place following the revolution in the United States; that said petitioner was instrumental in forming a Branch of the Hawaiian Civil Liberties Committee on the West Coast soon after his arrival in California from Hawaii in 1947 (an organization designated by the Attorney General as Communist, F.R. 315, No. 231); and that he was educational director of the Westlake Section of the Communist Party in Los Angeles, California in 1949.

III. That the Service records show with respect to petitioner's hearings under Service Warrant of Arrest (Government's Exhibit "C") that date for hearing was first set [fol. 259] on November 22, 1950 and held over objections of petitioner's counsel who requested continuance. Further hearings were continued for the purpose of causing depositions to be taken from certain Government witnesses in Hawaii.

Herman R. Landon.

Subscribed and sworn to before me this 4th day of January, 1951. Edmund L. Smith, Clerk, U. S. District Court, by Michael F. Lane, Deputy Clerk. (Seal.)

[fol. 260] EXHIBIT "C" TO RETURN

Warrant for Arrest of Alien

United States of America

Department of Justice

Los Angeles, Calif.

1600-61258

No. A-3611569

To District Enforcement Officer, Los Angeles, California Or to any Immigrant Inspector in the service of the United States.

Whereas, from evidence submitted to me, it appears that the alien, David Hyun, who entered this country at Honolulu, T. H. x SS "President Cleveland" on the 24th day of May, 1924, has been found in the United States in violation of the immigration laws thereof, and is subject to be taken into custody and deported pursuant to the following provisions of law, and for the following reasons, to wit:

The Act of Oct. 16, 1918, as amended, in that he has been, after entry, a member of the following class set forth in Section 1(2)(c) of said Act: An alien who was a member of the Communist Party of the United States.

I, by virtue of the power and authority vested in me by the laws of the United States, hereby command you to take into custody the said alien and grant him a hearing to enable him to show cause why he should not be deported in conformity with law. The expenses of detention, hereunder, if necessary, are authorized payable from the appropriation "Salaries and Expenses, Immigration and Naturalization Service, 1951."

Pending determination of deportability, the alien named is to be continued in custody. This warrant supersedes that issued on the 7th day of July, 1949.

For so doing, this shall be your sufficient warrant.
Witness my hand and seal this 31st day of October, 1950.

(S.) H. R. Landon, District Director.

[fol. 261] *Duly sworn to by Herman R. Landon. Jurat omitted in printing.*

[fols. 262-264] ACKNOWLEDGMENT OF SERVICE

Receipt is hereby acknowledged this January 4, 1951, of a copy of the Return to Writ of Habeas Corpus, in the above-entitled and numbered case.

Milton S. Tyre, Attorney for Petitioner, by Rose S. Rosenberg.

[fol. 265] [File endorsement omitted]

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION

[Title omitted]

TRAVERSE TO RETURN TO WRIT OF HABEAS CORPUS—Filed January 5, 1951

The Petitioner, David Hyun, hereby files his Traverse to the Return to the Writ of Habeas Corpus, which Return is dated January 4, 1951 and was served upon Petitioner's counsel on that date, and alleges, admits and denies as follows:

I

Answering Paragraphs VI, VII, VIII, X, XII and XIII, he alleges that he has no sufficient information or belief concerning the allegations contained therein, and on that ground denies generally and specifically each, every and all of the allegations contained therein; particularly he denies that if enlarged on bail he would engage in activities prejudicial to the public interest or which would endanger the welfare or safety of the United States; further he particularly denies that the Respondent or the Acting Commissioner is in the possession of any facts which would lead either of them reasonably to conclude the Petitioner would engage in such activities if enlarged on bail.

[fols. 266-268] II

Answering Paragraph I thereof denies generally and specifically each every and all of the allegations contained therein and the whole thereof.

III

Petitioner realleges herein each, every and all of the allegations and statements of fact contained in the Petition for Writ of Habeas Corpus on file herein as though they were set forth in full hereat, and by this reference incorporates the same as a part hereof.

Wherefore, Petitioner prays that he be forthwith ordered discharged and released from custody under bond with such conditions as to the Court may seem proper in the premises, and for such other and further relief as may seem proper to the Court in the premises.

David Hyun, Petitioner.

Duly sworn to by David Hyun. Jurat omitted in printing.

[fols. 269-270] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION

[Title omitted]

SUPPLEMENTAL RETURN TO WRIT OF HABEAS CORPUS—Filed January 9, 1951

I, Herman R. Landon, District Director of the Immigration and Naturalization Service, United States Department of Justice, Los Angeles, California, respondent herein, herewith supplement my Return to Writ of Habeas Corpus in the above entitled matter, and in answer to petitioner's Traverse thereto filed deny and allege as follows:

I

In answer to paragraph III of said Traverse which incorporates by reference the petition recently filed by petitioner and more specifically paragraphs VII, VIII and IX, respondent has no information and belief as to the allegations therein contained and therefore denies all of the allegations therein contained, and respondent alleges that petitioner has since 1945 been an active member of the Communist Party in whatever locality he was residing.

Wherefore, I, Herman R. Landon, District Director of the Immigration and Naturalization Service, United States Department of Justice, pray that the Writ of Habeas Corpus be dismissed.

Herman R. Landon, District Director, Immigration & Naturalization Service, United States Department of Justice, District No. 16.

Dated: January 8, 1951.

[fol. 271] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION

In the Matter of DAVID HYUN, Petitioner for Writ of Habeas Corpus

FINDINGS OF FACT AND CONCLUSIONS OF LAW—Filed January 22, 1951

The above matter having come on for hearing upon the writ of habeas corpus on the 9th day of January 1951, at 2:00 P.M., and on the 11th day of January 1951 at 2:00 P.M., before the Honorable Ben Harrison, Judge presiding, Milton S. Tyre appearing as attorney for petitioner, and Ernest A. Tolin, United States Attorney by Walter S. Binns, Chief Assistant, appearing as attorneys for respondent Herman R. Landon, District Director of Immigration and Naturalization Service, and said respondent having filed his Return and Supplemental Return to the Writ of Habeas Corpus, and petitioner having filed his Traverse to said Return, and the Court having heard oral argument and considered the Affidavit filed by respondent together with the Return, and having taken evidence as to the progress of the deportation hearings being considered before a hearing officer of the Immigration and Naturalization Service, and petitioner not desiring to submit evidence, the Court makes its findings of fact and conclusions of law.

FINDINGS OF FACT

I.

That David Hyun is an alien who was born at Seoul, Korea, on January 3, 1917, and entered the United States as a citizen of China.

[fol. 272]

II

That the petitioner was taken into custody on a warrant of arrest issued by authority of the Attorney General on July 25, 1949, and was released from custody on a bond in the sum of $2,000.00.

III

That, after a hearing on said warrant of arrest, a hearing de novo under the Administrative Procedure Act was ordered as a result of the decision of the Supreme Court in the case of *Sung* v. *McGrath*, 339 U.S. 33.

IV

That on September 26, 1950, the Acting Commissioner of Immigration and Naturalization, Washington, D. C., requested the District Director of Immigration and Naturalization, Los Angeles, California, to submit a report covering all aliens in the Los Angeles District who were currently active members of the Communist Party and who were under deportation proceedings.

V

That on October 6, 1950, the respondent submitted to the Acting Commissioner a report containing summaries of facts as reflected in the confidential and official records of the Government at Los Angeles in the cases of eleven aliens who were currently active members of the Communist Party, and in the cases of eight aliens indicated to be past members of the Communist Party. Petitioner's case was among the eleven active members so reported.

VI

That on October 21, 1950, the respondent received a radiogram from the Acting Commissioner of Immigration and Naturalization, Washington, D. C., directing him to apprehend and detain petitioner David Hyun among others. Thereafter petitioner was re-arrested.

VII

That on October 31, 1950, a new warrant of arrest was issued by authority of the Attorney General charging that petitioner was subject to deportation as a person who had

been, after entry into the United States, a member of the Communist Party. That pursuant to said instructions from the Attorney General, deportation hearings in petitioner's [fol. 273] case were held on November 22, 1950, and continued for the purpose of procuring depositions from witnesses in Hawaii at the request of the Government. Said depositions have been taken.

VIII

That the Acting Commissioner of Immigration was in possession of evidence that said petitioner was a member of the Communist Party of the United States, as was set forth in the Affidavit filed with the Return, as follows:

"That with respect to David Hyun, the petitioner herein, the Service is in possession of evidence showing that said petitioner has been a member of the Communist Party and has actively participated in its program; more specifically, that said petitioner was a member of the Communist Party in the Territory of Hawaii and was instrumental in reactivating the Communist Party in Hawaii in 1945; that he was a member of the Executive Board of the Communist Party in Hawaii in 1946; that he led and participated in discussion groups on indoctrination of Communist philosophy, planning, strategy, and recruitment of members in the Communist Party during the years 1946 and 1947; that he advocated re-distribution of wealth and Government ownership of industry, such as exists in Russia, and that these reforms would take place following the revolution in the United States; that said petitioner was instrumental in forming a branch of the Hawaiian Civil Liberties Committee on the West Coast soon after his arrival in California from Hawaii in 1947 (an organization designated by the Attorney General as Communist, F.R. 315, No. 231); and that he was educational director of the Westlake Section of the Communist Party in Los Angeles, California, in 1949."

IX

The Court takes judicial notice that a state of emergency exists and that an undeclared war is being waged in Korea

between the Armed Forces of the United States and the armed forces of Communist China.

[fols. 274-275] CONCLUSIONS OF LAW

I

The Attorney General, through the Immigration and Naturalization Service, has exercised discretion in determining that petitioner David Hyun be retained in custody pending deportation.

II

The retention of David Hyun in custody pending deportation was not arbitrary or capricious.

III

There is substantial evidence to support the decision of the Attorney General, acting through the Immigration and Naturalization Service, to retain petitioner David Hyun in custody.

IV

Petitioner is not being illegally restrained by respondent but is in custody of respondent under proper and lawful order.

V

The Writ of Habeas Corpus is and should be discharged and dismissed.

Dated: January 22, 1951.

Ben Harrison, United States District Judge.

Approved as to form: Milton S. Tyre, Attorney for Petitioner.

[fol. 276] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION

In the Matter of DAVID HYUN, Petitioner for Writ of Habeas Corpus

ORDER DISMISSING PETITION FOR WRIT OF HABEAS CORPUS AND DISCHARGING WRIT—January 22, 1951

The mandate of the Circuit Court of Appeals for the Ninth Circuit was spread in the District Court on December 27, 1950. The Court thereupon, in accordance with the mandate, ordered the issuance of writ of Habeas Corpus directed to Herman R. Landon, District Director of the Immigration and Naturalization Service, United States Department of Justice, Los Angeles, California, and set January 5, 1951 as the return date on the said writ. On said date the Court set the matter for hearing on January 9, 1951, the petitioner being represented by his counsel Milton S. Tyre, and the respondent by his counsel Ernest A. Tolin, United States Attorney, appearing by Walter S. Binns, Chief Assistant United States Attorney, and the Court having read the Return and the Traverse on file and the Supplemental Return, and having read and considered the Affidavit filed by respondent in addition to the Return and heard arguments, and further proceedings being had January 11, 1951, and the Court having taken evidence as to the progress of the deportation hearing against David Hyun before a hearing officer of the Immigration and Naturalization Service;

And the petitioner personally and by his attorney not desiring to submit evidence;

It is hereby ordered, adjudged and decreed that the petition for writ of habeas corpus herein is dismissed and the [fols. 277-278] Writ of Habeas Corpus issued herein be and hereby is discharged, and the petitioner is remanded to the custody of the Immigration and Naturalization Service of the Department of Justice.

Dated: January 22, 1951.

Ben Harrison, United States District Judge.

Approved as to form: Milton S. Tyre, Attorney for Petitioner.

[fols. 279-280] [File endorsement omitted]

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION

[Title omitted]

NOTICE OF APPEAL TO COURT OF APPEALS UNDER RULE 73(b) —Filed January 24, 1951

Notice is hereby given that David Hyun, appellant above named, hereby appeals to the Court of Appeals for the Ninth Circuit from the Order discharging the Writ of Habeas Corpus entered in this action on January 22, 1951.

Milton S. Tyre, Attorney for Appellant David Hyun, 650 South Grand Avenue, Los Angeles 17, California.

[fol. 281] [File endorsement omitted]

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION

[Title omitted]

STIPULATION DESIGNATING RECORD ON APPEAL—Filed January 25, 1951

It is hereby stipulated by and between the Appellant David Hyun and H. R. Landon, Respondent, through their respective counsel, that the Record on Appeal in the above entitled matter and the papers designated to be included in the Clerk's Transcript on Appeal shall consist of the following:

1. Petition for Writ of Habeas Corpus verified under the date of November 3, 1950.

2. Order to Show Cause Why Writ of Habeas Corpus Should Not Be Granted, dated November 3, 1950.

[fols. 282-283] 3. Return to Order to Show Cause Why Writ Should Not be Granted, verified on November 6, 1950.

4. Traverse to Return to Order to Show Cause Why Writ Should Not Be Granted, verified on November 6, 1950.

5. Return to Writ of Habeas Corpus together with affi-

dayits and documents attached thereto, which return was verified by Herman R. Landon under the date of January 4, 1951.

6. Supplemental Return to Writ of Habeas Corpus signed by Herman R. Landon, dated January ——, 1951.

7. Traverse to Return to Writ of Habeas Corpus dated January 4, 1951, which traverse was verified by David Hyun under the date of January 5, 1951.

8. Reporter's Transcript of all proceedings in the above matter since January 2, 1951.

9. Findings of Fact and Conclusions of Law dated January 22, 1951.

10. Order dismissing Petition for Writ of Habeas Corpus entered January 22, 1951.

11. This Stipulation Designating Record on Appeal.

12. Notice of Appeal to the Court of Appeals.

Dated: January 25, 1951.

Milton S. Tyre, Attorney for Appellant David Hyun;
Ernest A. Tolin, United States Attorney, by Walter S. Binns, Attorney for Respondent, H. R. Landon.

[fols. 284-285] Clerk's Certificate to foregoing transcript omitted in printing.

[Endorsed:] Filed Jan. 28, 1951. Paul P. O'Brien, Clerk.

[fol. 286] UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Before Stephens, Healy and Bone, Circuit Judges

ORDER OF SUBMISSION—December 1, 1950

Ordered (1) motions for bail pending appeal (2) that causes be heard on typewritten transcript of record and typewritten briefs, and (3) cause on merits, argued by Mr. John W. Porter, counsel for appellant Carlson, and by Mrs. Rose S. Rosenberg, counsel for appellant Stevenson, and by Mr. John Coughlan, counsel for appellants Mangaoang and Sasieff, and by Messrs. Walter Binns and John E. Bel-

cher, Assistants United States Attorney, and by Mr. John P. Boyd, Special Assistant to the Attorney General, counsel for appellees, and submitted to the court for consideration and decision, counsel for respective parties to file further briefs in five days.

[fol. 287] Before Stephens, Healy and Bone, Circuit Judges

ORDER DIRECTING ENTRY OF JUDGMENT—December 16, 1950

Pursuant to the order this day filed, it is ordered that a judgment be filed and recorded in each of above causes in accordance with the opinion rendered in the companion cause of Frank Carlson vs. Landon, etc., No. 12742; opinion in these causes to follow:

[fol. 288] UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 12744

DAVID HYUN, Appellant,

vs.

HERMAN R. LANDON, etc., Appellee

JUDGMENT—December 16, 1950

Appeal from the United States District Court for the Southern District of California, Central Division.

This cause came on to be heard on the Transcript of the Record from the United States District Court for the Southern District of California, Central Division and was duly submitted.

On consideration whereof, it is now here ordered and adjudged by this Court, that the order of the said District Court in this cause be, and hereby is reversed, and this cause be, and hereby is remanded to the said District Court with directions to the said District Court to take the undenied material allegations of petitioner's answer as true and to give the Director an opportunity to reveal reasons for exercising his discretion, if he did exercise discretion in denying bail, and to take note of facts relating to delays in the deportation hearings, and decide the issue upon such evidence and any other proper evidence which may be of-

fered and received, all in conformity with the opinion of this court in Case No. 12742.

[fol. 289] UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Before Stephens, Healy and Bone, Circuit Judges.

ORDER DIRECTING FILING OF OPINION—December 20, 1950.

Ordered that the typewritten opinion this day rendered by this Court in above causes be forthwith filed by the Clerk.

[fol. 290] IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 12,743

MIRIAM CHRISTINE STEVENSON, formerly Burroughs, nee Kenkel, alias Miki Ashton, Appellant,

vs.

HERMAN R. LANDON, District Director of the Immigration and Naturalization Service, United States Department of Justice, Appellee

No. 12,744

DAVID HYUN, Appellant,

vs.

HERMAN R. LANDON, District Director of the Immigration and Naturalization Service, United States Department of Justice, Appellee

No. 12,745

Dec. 20, 1950

HARRY CARLISLE, also known as Harry Carlyle, Appellant,

vs.

HERMAN R. LANDON, District Director of the Immigration and Naturalization Service, United States Department of Justice, Appellee

OPINION—December 20, 1950

Appeal from the United States District Court for the Southern District of California, Central Division

Before Stephens, Healy and Bone, Circuit Judges

STEPHENS, Circuit Judge

The appeals in the above entitled cases were decided and order entered on the 16th day of December, 1950, coincident with the decision and order in a like proceeding entitled [fol. 291] *Carlson v. Landon*, No. 12,742. We noted in our memorandum, filed on the same date, that opinion in each case would follow. We combine the three in one opinion.

The facts in each of the instant cases very largely parallel those set out in the *Carlson* case. The dates of the essential facts are not exactly the same in either case, but the variation of events and the dates of their happening are not great enough to make any particular difference. The applicable law, the principles applied and the reasoning and authority relied upon and set out in the *Carlson* case rule these cases and therefore we make specific reference thereto without repetition herein. The following alleged facts, undenied in the pleadings, are set out under the names of the three petitioners. Details as to each petitioner are set out in the petitions and we state their essence very briefly:

STEVENSON

Petitioner Stevenson was born in England in 1919. At the age of 12 years she was taken to Canada with her family. She entered the United States in 1923 and since has resided in Los Angeles, California. With her mother she visited Canada in 1928 for a few hours and later in the same year she went to Mexico for a few hours where she was married to a United States citizen. In 1929 she made inquiry of the Immigration and Naturalization Service as to applying for citizenship but her legal entrance into this country was questioned.

HYUN

The petition for Hyun sets out a seemingly long period of limited restraint under a bail bond given under an arrest for deportation prior to the amendment to the Immigration laws by the Internal Security Act of 1950, and complete restraint without bail since October 21, 1950, under an arrest for deportation pursuant to such amendment.

Petitioner Hyun was born in Seoul, Korea; is 33 years of age; was taken to Hawaii at an early age and resided there until December, 1947. His schooling resulted in a bachelor of science degree. In school he appears to have been a leader in social and religious activities. Although disqualified for military service during the late war because of his status as an alien, he became Captain of Reserve Officers [fols. 292-321] Training Corps at the University of Hawaii. He has applied for citizenship; is married and has two minor sons. He has resided in Los Angeles, California, since December, 1947, and has engaged in a useful occupation. Petitioner's petition is replete with a detailed account

of his life. He denies that his release would be detrimental to the United States in any manner.

CARLISLE

The petitioner Carlisle was born in England in 1897 and has resided in Los Angeles, California, for the past 15 years.

The orders in these cases dated December 16, 1950, are alike and are the same as in *Carlson v. Landon*, No. 12,742, 9 Cir., . . F.2d . . . The text of the orders is repeated, to-wit:

The judgment is reversed and the cause is remanded with direction to the district court to take the undenied material allegations of petitioner's answer as true and to give the Director an opportunity to reveal reasons for exercising his discretion, if he did exercise discretion in denying bail, and to take note of facts relating to delays in the deportation hearings, and decide the issue upon such evidence and any other proper evidence which may be offered and received, all in conformity with this opinion.

Reversed and remanded.

[Endorsed:] Opinion Filed Dec. 20, 1950. Paul P. O'Brien, Clerk.

[fol. 322] IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION

No. 12503-Y

In re HARRY CARLISLE, ALSO KNOWN AS HARRY CARLYLE

PETITION FOR WRIT OF HABEAS CORPUS—Filed November 3, 1950

Comes now Harry Carlisle, also known as Harry Carlyle, by Stanley Fleishman, his attorney, and petitions this Honorable Court for a Writ of Habeas Corpus directing Herman R. Landon, District Director of the Immigration and Naturalization Service, United States Department of Justice, District No. 16, to produce the said Harry Carlisle before this Court on a date and at a time to be set by this Court, and then and there to show cause why the said Harry Carlisle should not be released from custody

upon his bond; and in support thereof your petitioner alleges as follows:

I

That this verification is made by Stanley Fleishman rather than by the petitioner Harry Carlisle, personally, because the petitioner is in custody at Terminal Island, which makes it very difficult to have this petition signed personally, and the questions involved are questions of law.

II

On or about June 13, 1950, the Attorney General of the United States caused to be issued, and on or about June 16, 1950, to be served upon said Harry Carlisle, a warrant for his arrest, charging in substance that said Harry Car- [fol. 323] lisle was an alien found to be in the United States in violation of the immigration laws thereof, in that he was after entry an alien who is a member of and affiliated with an organization, association, society and group that believes in, advises, advocates and teaches the overthrow by force and violence of the Government of the United States, in violation of the Act of October 16, 1918.

III

That said warrant on its face authorized the release of said Harry Carlisle under bond in the sum of $5,000.00, and that following his said arrest under such warrant said Harry Carlisle was released upon posting bond in such amount.

IV

That at all times since on or about June 19, 1950 up to and including October 21, 1950, said Harry Carlisle was at liberty under such bond.

V

That in response to a demand for a bill of particulars made by petitioner as counsel for Harry Carlisle, Albert Del Guercio, Acting District Director of the Immigration and Naturalization Service wrote in a letter dated August 31, 1950:

"the respondent is alleged to have been a member of the Communist Party of the United States from 1933 to 1936, inclusive."

[fol. 324]

VI

That on July 6, 1950 said Harry Carlisle was advised to appear on July 26, 1950 for a hearing to show cause why he should not be deported from the United States; and on the said date Harry Carlisle did in fact appear for said hearing which was presided over by Hearing Examiner Burt F. Kearney.

VII

That thereafter and on July 28, 1950, Harry Carlisle was requested to appear for a hearing on September 29, 1950 and October 3, 1950.

VIII

That on September 26, 1950, Harry Carlisle was advised that the hearings scheduled for September 29, 1950 and October 3, 1950 had been temporarily placed off calendar and that he need not appear as previously directed; Harry Carlisle was also advised on September 26, 1950 that he would be informed of the time and place of hearing when a new date was set.

IX

That no new date has been set for a hearing to enable Harry Carlisle to show cause why he should not be deported from the United States.

X

That at all times since on or about June 16, 1950, to date, Harry Carlisle has been available, ready and willing to attend at such hearing or any other lawful proceeding under said warrant of arrest.

[fol. 325]

XI

That on or about July 13, 1950 James E. Riley, Acting Assistant Commissioner, Enforcement Division, Immigration and Naturalization Service, wrote J. Allan Frankel, the then attorney for Harry Carlisle, regarding the $5,000.00 bail imposed and said:

"Careful consideration is given in each case to all the relevant factors before the amount of bond is set. In the instant case, it was concluded that $5,000.00 bail was appropriate. I can see no reason to alter that conclusion."

XII

That Harry Carlisle was born in London, England on December 23, 1897; he last arrived in the United States at Detroit, Michigan on or about June 18, 1920; that at all times since his said entry into the United States, Harry Carlisle has been and now is a resident of the United States and has made and maintained his home here.

XIII

That continuously for the last fifteen (15) years Harry Carlisle has been a resident of the State of California in the County of Los Angeles.

XIV

That on Saturday, October 21, 1950, at approximately midnight, Harry Carlisle was arrested by agents of the District Director of the Immigration and Naturalization [fol. 326] Service at Los Angeles, taken into custody and lodged in the County Jail of Los Angeles County. That at the time of said arrest Harry Carlisle was informed by said agents that bond of $5,000.00 under which he had been at liberty since on or about June 19, 1950 had been revoked.

XV

That on October 24, 1950 Harry Carlisle filed a petition for a Writ of Habeas Corpus alleging that he was arrested and was being detained without warrant and without authority in law. Said petition was entitled Matter of Harry Carlisle, for Write of Habeas Corpus, No. 12451-HB.

XVI

That on October 24, 1950 the Honorable Judge Leon R. Yankwich signed an Order to Show Cause ordering H. R. Landon to show cause on October 30, 1950 why Harry Carlisle should not be restored to his liberty on his bond of $5,000.00.

XVII

That on October 30 and October 31, 1950 the hearing to show cause was heard before the Honorable Ben Harrison.

XVIII

That on October 31, 1950 H. R. Landon, District Director of the Immigration and Naturalization Service issued a new warrant for the arrest of Harry Carlisle charging that

"he has been, after entry, a member of the following class set forth in Section 1(2)(c) of said Act: an alien who was a member of the Communist Party of the United States."

[fol. 327]

XIX

That said new warrant further provided as follows:

"Pending determination of deportability the alien named is to be continued in custody. This warrant supersedes that issued on the 13th day of June, 1950".

XX

The said warrant of October 31, 1950 was served on petitioner Harry Carlisle while he was still in custody of H. R. Landon, District Director of Immigration and Naturalization Service, under the warrant issued on June 13, 1950, and while his petition for a Writ of Habeas Corpus was not yet passed upon by the Honorable Ben Harrison.

XXI

On November 1, 1950, petitioner Harry Carlisle in case No. 12451-BH asked that the said petition be dismissed for the reason that a new warrant was served after the original proceeding had been filed.

XXII

On November 3, 1950 Stanley Fleishman, attorney for the petitioner Harry Carlisle, received from the Clerk of the above entitled Court a Notice of Entry of Judgment in the Matter of Harry Carlisle for Writ of Habeas Corpus No. 12451-BH, stating:

"You are hereby notified that Dismissal has been entered this day in the above entitled case in Judgment Book 68, page 776. Dated at Los Angeles, California, [fol. 328] November 2, 1950".

XXIII

Your petitioner is informed and believes and on the basis of such information and belief alleges that it is the intention of said District Director to hold Harry Carlisle indefinitely and until the final determination of his deportability under said warrant of arrest, dated October 31, 1950.

XXIV

That in causing the arrest and detention of said Harry Carlisle under the circumstances hereinabove set forth, said District Director acted as agent and representative of the Attorney General of the United States; that such arrest and detention under such circumstances constituted an abuse of the discretion vested in the Attorney General by Section 20 of the Immigration Act of February 5, 1917 as amended (57 Stat. 553) in the following, among other respects:

(a) That said Harry Carlisle at all times herein mentioned has been, now is and will continue to be available to appear and will appear at any and all hearings or other lawful proceedings in connection with the determination of his deportabiiity;

(b) That said Harry Carlisle at all times herein mentioned has been and now is a law-abiding resident of the City of Los Angeles with his home and family here and with all of his interests and activities centered in and around the City of Los Angeles;

[fol. 329] (c) That by virtue of the grant by the Supreme Court of the United States on October 23, 1950 of a petition for Writ of Certiorari in the case of United States v. Dennis, et al. for the express purpose of reviewing the constitutionality of the Statute known as the Smith Act of 1940 (54 Stat. 670, 671), the deportability of said Harry Carlisle under said Act is placed in serious doubt and the validity of the charges against him as alleged above is placed in question;

(d) That the Internal Security Act of 1950, under which the new warrant of October 31, 1950 was issued, is unconstitutional;

(e) That said Harry Carlisle is not charged with anything other than having been a member of the Communist Party of the United States from 1933 to 1936 inclusive;

(f) That all of the relevant factors were duly considered at the time that Harry Carlisle's bail was set in the sum of $5,000.00; at that time bail in the sum of $5,000.00 was considered appropriate. That all the relevant factors are the same now as they were when Harry Carlisle was set free on bail in the sum of $5,000.00 in June of 1950.

XXV

That the action of the said District Director in arresting and detaining said Harry Carlisle as aforesaid constituted a denial of due process of law to said Harry Carlisle in the [fol. 330] following among other respects:

(a) That the deportation proceedings against Carlisle are in their initial stages and there has not yet been a formal hearing held in the case. The proceedings are likely to continue for many months and his detention without bail throughout such proceedings will deprive him of his liberty arbitrarily and in violation of the due process clause of the Fifth Amendment to the Constitution of the United States.

(b) That the said Harry Carlisle was arrested and is being detained without bail because of his political beliefs and activities.

(c) That Harry Carlisle is being detained without bail allegedly under authority of the Internal Security Act for acts he allegedly performed prior to its enactment.

XXVI

That the detention of said Carlisle without bond as aforesaid constitutes a denial of bail in violation of the Eighth Amendment to the Constitution of the United States, and under the circumstances hereinbefore alleged further constitutes cruel and unusual punishment in violation of the Eighth Amendment thereto.

XXVII

That Section 20 of the Immigration Act of February 5, 1917, as amended by Section 23 of Public Law 831, 81st Congress (commonly known as Subversive Activities Con-[fol. 331] trol Act of 1950) is unconstitutional and void in that it deprives persons, including said Harry Carlisle, of

liberty and property without due process of law in violation of the Fifth Amendment to the Constitution of the United States, in that it abridges the freedom of persons, including said Harry Carlisle, of speech, the press and assembly and the right to petition the government for redress of grievances, and in that it purports to authorize indefinite detention of persons including said Carlisle without bond.

XXVIII

That by virtue of the facts and circumstances hereinabove set forth, said Harry Carlisle is unlawfully imprisoned, detained and restrained of his liberty by H. R. Landon, District Director, Immigration and Naturalization Service, and that said imprisonment, detention, confinement and restraint are illegal, arbitrary and unwarranted, as hereinabove alleged.

XXIX

That a previous application for a Writ of Habeas Corpus has been dismissed as hereinabove set forth.

Wherefore, petitioner prays that a Writ of Habeas Corpus may be granted directed to H. R. Landon, District Director, Immigration and Naturalization Service, and his deputies, and to any Sheriff, Marshal, Constable, or other peace officer having custody of the body of the said Harry Carlisle, commanding him to have the body of said Har
[fol. 332] Carlisle before this Court at a time and place to be specified, to do and receive what shall then and there be considered concerning the said Harry Carlisle together with the time and cause of his detention, and said Writ; and that the said Harry Carlisle may be restored to his liberty on his bond of $5,000.00.

Dated this 3rd day of November, 1950.

(S.) Stanley Fleishman.

Duly sworn to by Stanley Fleishman. Jurat omitted in printing.

[File endorsement omitted.]

[fol. 333] IN UNITED STATES DISTRICT COURT

SUPPLEMENTAL PETITION FOR WRIT OF HABEAS CORPUS—Filed November 7, 1950

Pursuant to agreement entered into between Walter S. Binns, Chief Assistant United States Attorney and Stanley Fleishman, Attorney for Petitioner, this supplemental petition is filed by Harry Carlisle and respectfully states:

I

Petitioner Harry Carlisle has never been informed by the Attorney General or his deputies or anyone else:

A. What activities it is believed he would engage in if enlarged on bail.

B. In what way it is claimed said activities would be prejudicial to the public interest.

C. In what way it is claimed said activities would endanger the welfare and safety of the United States.

(S.) Stanley Fleishman, Attorney for Petitioner.

Duly sworn to by Stanley Fleishman. Jurat omitted in printing.

[fol. 334] [File endorsement omitted.]

[fol. 335] IN UNITED STATES DISTRICT COURT

WRIT OF HABEAS CORPUS—January 2, 1951

The President of the United States of America to H. R. Landon, District Director of the Immigration and Naturalization Service, Los Angeles, California, Greeting:

You are hereby commanded, that the body of Harry Carlisle, also known as Harry Carlyle, by you restrained of his liberty, as it is said detained by whatsoever names the said Harry Carlisle, also known as Harry Carlyle, may be detained, together with the day and cause of his being taken and detained, you have before the Honorable Ben Harrison, Judge of the United States District Court in and for the Southern District of California, at the court room of said Court, in the City of Los Angeles at 10:00

o'clock a.m., on the 5th day of January, 1951, then and thereto do, submit to and receive whatsoever the said Judge shall then and there consider in that behalf, and have you then and there this writ.

Witness the Honorable Ben Harrison, United States District Judge at Los Angeles, California, this 2nd day of January, A. D. 1951.

Edmund L. Smith, Clerk. By (S.) Murray E. Wire, Deputy Clerk. (Seal.)

[fol. 336] United States Marshal's Return

So. District of Calif., ss:

Received the within writ the 3 day of Jan., 1951, and executed same. Serving H. R. Landon by leaving Writ with Mr. H. R. Field, Room #651, Fed. Bldg. L. A.

James J. Boyle, U. S. Marshal. By (S.) Travis F. Oltman, Deputy Marshal.

Marshal's Fee $2.00.

[Endorsed:] Filed January 5, 1951. Edmund L. Smith, Clerk, by (S.) G. A. Saunders, Deputy Clerk.

[fol. 337] In United States District Court.

Return to Writ of Habeas Corpus—Filed January 4, 1951

I, Herman R. Landon, District Director of the Immigration and Naturalization Service, United States Department of Justice, Los Angeles, California, respondent herein, as and for my return to writ of habeas corpus in the above entitled case, respectfully state:

I

That Harry Carlisle, also known as Harry Carlyle, hereafter referred to as the petitioner, is not being illegally restrained by respondent of his liberty, but is in respondent's custody under proper and lawful authority.

II

That the said petitioner is a native and subject of Great Britain, born at London, England, on or about September 23, 1897.

III

That a warrant for the said petitioner's arrest was issued by authority of the Attorney General on June 13, 1950, charging that he was subject to deportation under the Act of October 16, 1918, as amended (8 USC 137), a certified copy of which warrant of arrest is attached hereto as a part of this return and marked Exhibit "A".

IV

That the said petitioner was taken into custody on the aforesaid warrant of arrest on June 16, 1950, and on June 19, 1950, was released from custody on a delivery bond in [fol. 338] the sum of $5,000.

V

That, after a hearing on said warrant of arrest, to give said petitioner an opportunity to show cause why he should not be deported, a hearing de novo under the Administrative Procedure Act was ordered as a result of the decision of the Supreme Court in the case of Sung v. McGrath, 339 U.S. 33.

VI

That on September 26, 1950, the Acting Commissioner of Immigration and Naturalization, Washington, D. C., requested the District Director of Immigration and Naturalization, Los Angeles, California, to submit a report covering all aliens in the Los Angeles District who were currently active members of the Communist Party and who were under deportation proceedings on charges under the Act of October 16, 1918, as amended (8 USC 137).

VII

That on October 6, 1950, the District Director of Immigration and Naturalization, Los Angeles, California, submitted to the Acting Commissioner of Immigration and Naturalization, Washington, D. C., a report containing summaries of facts as reflected in the confidential and official records of the Government at Los Angeles in the cases of eleven aliens indicated to be currently active members of the [fol. 339] Communist Party, and in the cases of eight aliens indicated to be past members of the Communist Party, all

of whom were the subjects of pending deportation proceedings under the Act of October 16, 1918, as amended (8 USC 137), which report recited facts tending to establish that the aforesaid petitioner was one of the said eleven currently active members of the Communist Party, some of which facts are recited in respondent's affidavit which is attached hereto as a part of this return and marked Exhibit "B".

VIII

That on October 21, 1950, the following instructions were received by the District Director of Immigration and Naturalization, Los Angeles, California, by radio from the Acting Commissioner of Immigration and Naturalization, Washington, D. C.:

> "Apprehend immediately and detain the following aliens pursuant to Section Twenty of Nineteen Seventeen Act as amended by Internal Security Act: David Hyun and Harry Carlisle and Solomon Sokolnick. Also apprehend and detain all active Communists under proceedings in your district unless detention would result in severe hardship because of individual's physical condition or family situation. Give priority to those named."

IX

That pursuant to the aforesaid instructions the petitioner was taken into custody on October 21, 1950, on the aforesaid [fol. 340] warrant of arrest issued on June 13, 1950.

X

That on October 27, 1950, the following radiogram was received by the District Director of Immigration and Naturalization, Los Angeles, California, from the Acting Commissioner of Immigration and Naturalization, at Washington, D. C.:

> "For your information and that of United States attorneys and aliens and their attorneys the Instruction to you of October Twenty First to take into custody and detain the alien Communists was issued only after the cases had been examined in the light of the Internal Security Act of Nineteen Fifty and the spirit and intention thereof and all of the factors concerning the likeli-

hood of the deportability and the activities of said alien had been given careful consideration as well as the factors of undue hardship which continued detention might impose stop As you have already been instructed the hearings and steps towards disposition of these cases are to be given top priority stop Also as you have been advised these aliens were ordered detained by authority of the Attorney General delegated to me by Section Nine Zero Point One of Title Eight CFR paren Twelve FR Five Zero Seven Two July Thirty One Nineteen Forty Seven paren under Section Thirty Seven of the Alien Registration Act of Nineteen Forty comma Eight USC Four Five Eight".

[fol. 341]

XI

That on October 31, 1950, while the said petitioner continued in custody under the warrant of arrest issued on June 13, 1950, a new warrant of arrest was issued by authority of the Attorney General charging that he was subject to deportation under the Act of October 16, 1918 (8 USC 137), as amended by the Internal Security Act of 1950, and served upon the said petitioner, which said warrant of arrest of October 31, 1950, superseded the said warrant of arrest issued on June 13, 1950, a copy of which said warrant of arrest of October 31, 1950, is attached hereto as a part of this return and marked Exhibit "C".

XII

That pursuant to outstanding instructions from the Acting Commissioner of Immigration and Naturalization, Washington, D. C., the case of petitioner, as other deportation cases under the Act of October 16, 1918, as amended (8 USC 137), has been given first priority in expediting hearing, to the end that the said case may be disposed of as speedily as possible, but delay has been encountered from counsel for the petitioner, as recited in more detail in respondent's affidavit which is attached hereto as a part of this return and marked Exhibit "B".

XIII

That the Acting Commissioner of Immigration and Naturalization, Washington, D. C., acting for the Attorney General, has exercised the grant of statutory discretion in

[fol. 342] Section 20 of the Immigration Act of 1917 (8 USC 156), as amended by the Internal Security Act of 1950, to take the said petitioner into custody and to continue him in custody without bond pending final determination of his deportability, and in exercising said discretion to detain the said petitioner without bond the Acting Commissioner of Immigration and Naturalization, Washington, D. C., has carefully considered facts which in his judgment establish that the said petitioner is a currently active member of the Communist Party engaged in the execution of the program of the Communist Party, the central purpose of which is to subvert the existing Government of the United States indirectly by espionage and sabotage and directly by force and violence and to substitute a totalitarian dictatorship committed to the destruction of individual liberty and private property; and that, moreover, said facts cause the said Acting Commissioner to believe that if the said petitioner were enlarged on bail he would engage in activities which would be prejudicial to the public interest, and would endanger the welfare and safety of the United States—which findings the said Acting Commissioner has communicated to respondent on the basis of facts which the respondent has communicated to the said Acting Commissioner, tending to establish the said petitioner's current affiliation with and activity on behalf of the Communist Party, as recited herein. [fol. 343] Wherefore, I, Herman R. Landon, District Director, Immigration and Naturalization Service, United States Department of Justice, pray that the writ of habeas corpus be dismissed.

(S.) Herman R. Landon, District Director Immigration & Naturalization Service, United States Department of Justice, District No. 16.

[fol. 344] EXHIBIT "A" TO RETURN

Warrant for Arrest of Alien, United States of America, Department of Justice

Los Angeles, Calif.

CO A5 542 165.
No. 1600-22413.

To District Enforcement Officer, Los Angeles, California or to any Immigrant Inspector in the service of the United States.

Whereas, from evidence submitted to me, it appears that the alien Harry Carlisle aka Harry Carlyle aka Stephen Peacock aka Harry Hoffman who entered this country at Detroit, Michigan by International Ferry on the 18th day of June, 1920 has been found in the United States in violation of the immigration laws thereof, and is subject to be taken into custody and deported pursuant to the following provisions of law, and for the following reasons, to wit:

The Act of October 16, 1918, as amended, in that he was, after entry, a member of the following class, set forth in Section 1 of said Act: An alien who is a member of an organization, association, society, and group that advises, advocates and teaches the overthrow, by force and violence, of the Government of the United States.

The Act of October 16, 1918, as amended, in that he was, after entry, a member of the following class, set forth in [fol. 345] Section 1 of said Act: An alien who is a member of an organization, society, and group that writes, circulates, distributes, prints, publishes, and displays any written and printed matter advising, advocating, and teaching the overthrow, by force and violence, of the Government of the United States.

I, by virtue of the power and authority vested in me by the laws of the United States, hereby command you to take into custody the said alien and grant him a hearing to enable him to show cause why he should not be deported in conformity with law. The expenses of detention, hereunder, if necessary, are authorized payable from the appropriation "Salaries and Expenses, Immigration and Nat-

uralization Service, 1950." Authority has been granted to release under bond in the sum of $5000, the alien named.

For so doing, this shall be your sufficient warrant.

Witness my hand and seal this 13th day of June, 1950.

(S.) Albert Del Guercio, Acting District Director.

[fol. 346] EXHIBIT "B" TO RETURN

IN THE UNITED STATES OF AMERICA, SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION

STATE OF CALIFORNIA
County of Los Angeles, ss:

Comes now Herman R. Landon, respondent herein, who states and deposes, as follows:

I. That he is District Director for the United States Immigration and Naturalization Service, Department of Justice, for the Los Angeles District, and as such is custodian of the records of the United States Immigration and Naturalization Service in said district.

II. That with respect to Harry Carlisle, the petitioner herein, the Service is in possession of evidence showing that said petitioner has been a member of the Communist Party of the United States and has actively participated in its program; more specifically, that in 1932 petitioner stated that he was in favor of the overthrow of the Government of the United States and would go to any means to attain that end; that petitioner was a speaker at closed meetings of Communist Party functionaries in 1933; that in 1935 said petitioner was editor of the "Western Worker" (the then official Western organ of the Communist Party, U.S.A., Section of the Communist International); in 1937 said petitioner was a member of the League of American Writers (an organization designated by the Attorney General as Communist, F. R. 315, No. 231); that in 1949 said peti-
[fol. 347] tioner was reported in the Press as speaker on Communist Party topics and activities; in 1949 said petitioner was active in the affairs of the American-Russian Institute and was on its list of approved speakers (said organization has been designated by the Attorney General as Communist, F.R. 315, No. 231); that in August, 1950, the said petitioner was a speaker at a meeting of the Civil Rights Congress in Los Angeles (an organization desig-

nated by the Attorney General as Communist, F.R. 315, No. 231); that at hearings held in connection with deportation proceedings, the petitioner refused to answer questions regarding his membership in the Communist Party on the ground of self-incrimination.

III. That the Service records show with respect to petitioner's hearings under Service Warrant of Arrest (Government's Exhibit "C"), the case was first set for hearing on November 22, 1950 and upon motion of petitioner's counsel was continued to November 28, 1950. On that date, the case was again continued to December 13, 1950 on motion of petitioner's counsel. On the latter date, it was again continued on motion of petitioner's counsel.

(S.) Herman R. Landon.

Subscribed and sworn to before me this 4th day of January, 1951. Edmund L. Smith, Clerk U. S. District Court, by (S.) Michael F. Leone, Deputy Clerk. (Seal)

[fol. 348] EXHIBIT "C" TO RETURN

Warrant for Arrest of Alien

United States of America

Department of Justice

Los Angeles, California

Copy

1600-22413
No. A-5542165

To District Enforcement Officer, Los Angeles, California or to any Immigrant Inspector in the service of the United States:

Whereas, from evidence submitted to me, it appears that the alien Harry Carlisle aka Harry Carlyle aka Stephen Peacock aka Harry Hoffman who entered this country at Detroit, Michigan by International Ferry on the 18th day of June, 1920 has been found in the United States in violation of the immigration laws thereof, and is subject to be

taken into custody and deported pursuant to the following provisions of law, and for the following reasons, to wit:

The Act of Oct. 16, 1918, as amended, in that he has been, after entry, a member of the following class set forth in Section 1(2)(c) of said Act: An alien who was a member of the Communist Party of the United States.

I, by virtue of the power and authority vested in me by the laws of the United States, hereby command you to take into custody the said alien and grant him a hearing to enable him to show cause why he should not be deported in conformity with law. The expenses of detention, here-[fol. 349] under, if necessary, are authorized payable from the appropriation "Salaries and Expenses, Immigration and Naturalization Service, 1951."

Pending determination of deportability, the alien named is to be continued in custody. This warrant supersedes that issued on the 13th day of June, 1950.

For so doing, this shall be your sufficient warrant.
Witness my hand and seal this 31st day of October, 1950.

(S.) H. R. Landon, District Director.

[fol. 350] *Duly sworn to by Herman R. Landon. Jurat omitted in printing.*

[fol. 351] (Title of District Court and Cause)

ACKNOWLEDGMENT OF SERVICE

Receipt is hereby acknowledged this 4 day of January, 1951, of a copy of the Return to Writ of Habeas Corpus, in the above-entitled and numbered case.

Stanley Fleishman, Attorney for Petitioner. By Stanley Fleishman, By Rose S. Rosenberg.

[File endorsement omitted.]

[fol. 352] IN UNITED STATES DISTRICT COURT

DEMURRER AND TRAVERSE TO RETURN TO WRIT OF HABEAS CORPUS—Filed January 5, 1951

Comes now Harry Carlisle by Stanley Fleishman his attorney and demurs to and traverses the Return to Show Cause Why Writ Should Not be Granted herein, as follows:

A

By way of demurrer to the Return on file herein, petitioner alleges:

I

That the facts stated in the Return are insufficient to justify the restraint of petitioner Harry Carlisle.

II

Paragraph XIII of the Return is uncertain in the following particulars:

(a) It cannot be ascertained from the Return upon what facts, if any, the Attorney General exercised his discretion to deny petitioner Harry Carlisle bail.

(b) It cannot be ascertained from the Return what activities it is believed Harry Carlisle would engage in if enlarged on bail.

(c) It cannot be ascertained from the Return where he would engage in said activities if enlarged on bail.

(d) It cannot be ascertained from the Return with whom he would engage in said activities if enlarged on bail.

(e) It cannot be ascertained from the Return when he [fol. 353] would engage in said activities if enlarged on bail.

(f) It cannot be ascertained from the Return in what way said activities would be prejudicial to the public interest.

(g) It cannot be ascertained from the Return in what way said activities would endanger the welfare and safety of the United States.

III

The Return is unintelligible in the same respects in which it is alleged herein above that it is uncertain.

IV

The Return is ambiguous in the same respects in which it is alleged herein above that it is uncertain.

B

By way of traverse to the Return on file herein, petitioner Harry Carlisle admits, denies and alleges as follows:

I

That each and every allegation of the petitioner Harry Carlisle's Petition and his Supplemental Petition for a Writ of Habeas Corpus is herein incorporated by reference as though each and every paragraph therein were fully set forth herein.

II

That the deportation proceedings in this case will take in excess of six months to conclude since the proceedings require not only hearings before a hearing officer but also require recommendations and allow for appeal to the Board [fol. 354] of Immigration Appeals. In addition, the petitioner of course has the right to a judicial review of any adverse order which may be rendered.

Wherefore petitioner Harry Carlisle prays:

1. That the Demurrer to the Return be granted.
2. That a Writ of Habeas Corpus be granted and that petitioner Harry Carlisle be restored to his liberty on the bond of $5,000.00.

(S.)Stanley Fleishman, Attorney for Petitioner.

Duly sworn to by Stanley Fleishman. Jurat omitted in printing.

[fol. 355] Received copy of the within Traverse this 5 day of Jan, 1951.

Ernest A. Tolin, U. S. Atty., By —, Attorney for Respondent.

Received copy of the within Traverse this 5 day of Jan. 1951.

(S.) Walter S. Binns, Attorney for —

[File endorsement omitted.]

[fol. 356] IN UNITED STATES DISTRICT COURT

SUPPLEMENTAL RETURN TO WRIT OF HABEAS CORPUS—Filed January 9, 1951

I, Herman R. Landon, District Director of the Immigration and Naturalization Service, United States Department of Justice, Los Angeles, California, respondent herein, herewith supplement my return to Writ of Habeas Corpus in the above entitled matter, and in answer to petitioner's Traverse thereto filed deny and allege as follows:

I

In answer to paragraph I of said Traverse which incorporates the petition and supplemental petition heretofore filed by petitioner, and paragraphs XII and XIII thereof, respondent has no information and belief as to the truth of the allegations therein contained and therefore denies the allegations contained therein.

II

In answer to paragraph XXIV, respondent denies that Harry Carlisle has been a law-abiding resident of the City of Los Angeles, State of California, and alleges that during all of his residence in the City of Los Angeles, State of California, the said Harry Carlisle has been a member of the Communist Party; and further alleges that said membership in the Communist Party was not limited to the year 1933 through 1936.

III

In answer to paragraph XXV respondent denies that the [fol. 357] present pending deportation proceedings will continue for many months and alleges that they will proceed with expedition and dispatch if the respondent will cooperate by consenting to the holding of the hearings.

Wherefore, I, Herman R. Landon, District Director of the Immigration and Naturalization Service, United States Department of Justice, pray that the Writ of Habeas Corpus be dismissed.

(S.) Herman R. Landon, District Director Immigration & Naturalization Service, United States Department of Justice, District No. 16.

Dated: January 8, 1951.

[File endorsement omitted.]

[fol. 358] IN UNITED STATES DISTRICT COURT

FINDINGS OF FACT AND CONCLUSIONS OF LAW—Filed January 22, 1951

The above matter having come on for hearing upon the writ of habeas corpus on the 9th day of January 1951, at 2:00 P.M., and on the 11th day of January 1951, at 2:00 P.M., before the Honorable Ben Harrison, Judge presiding, Stanley Fleishman appearing as attorney for petitioner, and Ernest A. Tolin, United States Attorney, by Walter S. Binns, Chief Assistant, appearing as attorneys for respondent Herman R. Landon, District Director of Immigration and Naturalization Service, and said respondent having filed his Return and Supplemental Return to the Writ of Habeas Corpus, and petitioner having filed his Demurrer and Traverse to said Return, and the Court having heard oral argument and considered the Affidavit filed by respondent together wtih the Return, and having taken evidence as to the progress of the deportation hearings being considered before a hearing officer of the Immigration and Naturalization Service, and petitioner not desiring to submit evidence, the Court makes its findings of fact and conclusions of law.

FINDINGS OF FACT

I

That Harry Carlisle, also known as Harry Carlyle, is a native and subject of Great Britain, born at London, England, on September 23, 1897.

[fol. 359] II

That petitioner was taken into custody on June 16, 1950, on a warrant of arrest issued by authority of the Attorney General on June 13, 1950, and was released from custody on bond in the sum of $5,000.00.

III

That on September 26, 1950, the Acting Commissioner of Immigration and Naturalization, Washington, D. C., requested the District Director of Immigration and Natu-

ralization, Los Angeles, California, to submit a report covering all aliens in the Los Angeles District who were currently active members of the Communist Party and who were under deportation proceedings.

IV

That on October 6, 1950, the respondent submitted to the Acting Commissioner a report containing summaries of facts as reflected in the confidential and official records of the Government at Los Angeles in the cases of eleven aliens who were currently active members of the Communist Party, and in the cases of eight aliens indicated to be past members of the Communist Party.

V

That on October 21, 1950, the respondent received a radiogram from the Acting Commissioner of Immigration and Naturalization, Washington, D. C., directing him to apprehend and detain petitioner Harry Carlisle, also known as Harry Carlyle, among others. Thereafter petitioner [fol. 360] was re-arrested.

VI

That on October 31, 1950, a new warrant of arrest was issued by authority of the Attorney General, charging that petitioner was subject to deportation as a person who had been, after entry into the United States, a member of the Communist Party; that pursuant to said instructions from the Attorney General a deportation hearing in petitioner's case was held on November 22, 1950, and said hearing was continued to November 28, 1950; on that date the case was again continued to December 13, 1950; on that date the hearing was continued again, all at the request of petitioner.

VII

That the Acting Commissioner was in possession of evidence that the said petitioner had been, and is, a member of the Communist Party of the United States, which evidence was set forth in the affidavit filed together with the Return, and is as follows:

"That with respect to Harry Carlisle, the petitioner herein, the Service is in possession of evidence showing that said petitioner has been a member of the Com-

munist Party of the United States and has actively participated in its program; more specifically, that in 1932 petitioner stated that he was in favor of the overthrow of the Government of the United States and would go to any means to attain that end; that peti- [fol. 361] tioner was a speaker at closed meetings of Communist Party functionaries in 1933; that in 1936 said petitioner was editor of the "Western Worker" (the then official Western organ of the Communist Party, U.S.A., Section of the Communist International); in 1937 said petitioner was a member of the League of American Writers (an organization designated by the Attorney General as Communist, F.R. 315, No. 231); that in 1949 said petitioner was reported in the Press as speaker on Communist Party topics and activities; in 1949 said petitioner was active in the affairs of the American-Russian Institute and was on its list of approved speakers (said organization has been designated by the Attorney General as Communist, F.R. 315, No. 231); that in August 1950, the said petitioner was a speaker at a meeting of the Civil Rights Congress in Los Angeles (an organization designated by the Attorney General as Communist, F. *E.* 315, No. 231); that at hearings held in connection with deportation proceedings, the petitioner refused to answer questions regarding his membership in the Communist Party on the ground of self-incrimination."

VIII

The Court takes judicial notice that a state of emergency exists and that an undeclared war is being waged in Korea between the Armed Forces of the United States and the [fol. 362] armed forces of Communist China.

Conclusions of Law

I

The Attorney General, through the Immigration and Naturalization Service, has exercised discretion in determining that petitioner Harry Carlisle, also known as Harry Carlyle, be retained in custody pending deportation.

II

The retention of Harry Carlisle, also known as Harry Carlyle, in custody pending deportation was not arbitrary or capricious.

III

There is substantial evidence to support the decision of the Attorney General, acting through the Immigration and Naturalization Service, to retain petitioner Harry Carlisle in custody.

IV

Petitioner is not being illegally restrained by respondent but is in custody of respondent under proper and lawful order.

V

The Writ of Habeas Corpus is and should be discharged and dismissed.

Dated: This 22 day of January, 1951.

(S.) Ben Harrison, United States District Judge.

[fol. 363] Approved as to form: Stanley Fleishman, Attorney for Petitioner.

[File endorsement omitted.]

[fol. 364] In the United States District Court in and for the Southern District of California, Central Division

No. 12503-BH

In the Matter of Harry Carlisle, also known as Harry Carlyle, Petitioner for Writ of Habeas Corpus

Order Dismissing Petition for Writ of Habeas Corpus and Discharging Writ— January 22, 1951

The mandate of the Circuit Court of Appeals for the Ninth Circuit was spread in the District Court on December 27, 1950. The Court thereupon, in accordance with the mandate, ordered the issuance of a Writ of Habeas Corpus directed to Herman R. Landon, District Director of the Immigration and Naturalization Service, United States

Department of Justice, Los Angeles, California, and set January 5, 1951 as the return date on the said writ. On said date the Court set the matter for hearing on January 9, 1951, the petitioner being represented by his counsel Stanley Fleishman, and the respondent by his counsel Ernest A. Tolin, United States Attorney, appearing by Walter S. Binns, Chief Assistant United States Attorney, and the Court having read the Return and the Traverse on file and the Supplemental Return, and having read and considered the Affidavit filed by respondent in addition to the Return and heard arguments, and further proceedings being had January 11, 1951, and the Court having taken [fol. 365] evidence as to the progress of the deportation hearing against Harry Carlisle, also known as Harry Carlyle, before a hearing officer of the Immigration and Naturalization Service;

And the petitioner personally and by his attorney not desiring to submit evidence;

It is hereby ordered, adjudged and decreed that the petition for writ of habeas corpus herein is dismissed and the Writ of Habeas Corpus issued herein be and hereby is discharged, and the petitioner is remanded to the custody of the Immigration and Naturalization Service of the Department of Justice.

Dated: January 22, 1951.

(S.) Ben Harrison, United States District Judge.

Approved as to form: Stanley Fleishman, Attorney for Petitioner.

Judgment entered Jan. 22, 1951. Book 70, Page 384. Edmund L. Smith, Clerk, by (S.) Edw. F. Drew, Deputy.

[File endorsement omitted.]

[fol. 366] IN UNITED STATES DISTRICT COURT

NOTICE OF APPEAL—Filed January 25, 1951

To the Clerk of the Above Entitled Court:

You will please take notice that the petitioner, Harry Carlisle, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the Order Dismissing the Petition for a Writ of Habeas Corpus entered in the above entitled Court on January 22, 1951. The said appeal is on a question of law.

Dated: January 22, 1951.

(S.) Stanley Fleishman, Attorney for Petitioner.

[File endorsement omitted.]

[fol. 367] IN UNITED STATES DISTRICT COURT

STIPULATION AS TO RECORD ON APPEAL—Filed January 25, 1951

It is hereby stipulated by and between the undersigned counsel for the petitioner-appellant and for the respondent-appellee herein that the following documents and *appers* shall constitute the record on appeal to the United States Court of Appeals for the Ninth Circuit herein:

1. The petition for writ of habeas corpus.
2. The supplemental petition for writ of habeas corpus.
3. The writ of habeas corpus issued herein on or about January 2, 1951.
4. The return to writ of habeas corpus of H. R. Landon, respondent herein, together with exhibits attached thereto, executed January 4, 1951.
5. The demurrer and traverse to the petition to the writ of habeas corpus dated January 5, 1951.
6. The supplemental return to writ of habeas corpus.
7. Reporter's transcript of all proceedings.
8. Order discharging writ and denying petition, entered January 22, 1951.

10. This stipulation as to Record on Appeal.
11. Findings of Fact and Conclusions of Law.

Dated: This 22 day of January, 1951.

(S.) Stanley Fleishman, Attorney for Petitioner-[fol. 368] Appellant; Ernest A. Tolin, United States Attorney. (S.) Walter S. Binns, Chief Assistant U. S. Attorney, Attorneys for Respondent-Appellee.

[File endorsement omitted.]

[fols. 369-370] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 371] UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Before Stephens, Healy and Bone, Circuit Judges

ORDER OF SUBMISSION—December 1, 1950

Ordered (1) motions for bail pending appeal (2) that causes be heard on typewritten transcript of record and typewritten briefs, and (3) cause on merits, argued by Mr. John W. Porter, counsel for appellant Carlson, and by Mrs. Rose S. Rosenberg, counsel for appellant Stevenson, and Mr. John Caughlan, counsel for appellants Mangaoang and Sasieff, and by Messrs. Walter Binns and John E. Belcher, Assistants United States Attorney, and Mr. John P. Boyd, Special Assistant to the Attorney General, counsel for appellees, and submitted to the court for consideration and decision, counsel for respective parties to file further briefs in five days.

[fol. 372] Before Stephens, Healy and Bone, Circuit Judges

ORDER DIRECTING ENTRY OF JUDGMENT—December 16, 1950

Pursuant to the order this day filed, it is ordered that a judgment be filed and recorded in each of above causes in accordance with the opinion rendered in the companion

cause of Frank Carlson vs. Landon, etc., No. 12742; opinion in these causes to follow:

[fol. 373] UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 12745

HARRY CARLISLE, etc., Appellant,

vs.

HERMAN R. LANDON, ETC., Appellee

JUDGMENT—December 16, 1950

Appeal from the United States District Court for the Southern District of California, Central Division

This cause came on to be heard on the Transcript of the Record from the United States District Court for the Southern District of California, Central Division and was duly submitted.

On consideration whereof, it is now here ordered and adjudged by this Court, that the order of the said District Court in this cause be, and hereby is reversed, and this cause be, and hereby is remanded to the said District Court with directions to the said District Court to take the undenied material allegations of petitioner's answer as true and to give the Director an opportunity to reveal reasons for exercising his discretion, if he did exercise discretion in denying bail, and to take note of facts relating to delays in the deportation hearings, and decide the issue upon such evidence and any other proper evidence which may be offered and received, all in conformity with the opinion of this court in Case No. 12742.

[fol. 374] UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Before Stephens, Healy and Bone, Circuit Judges.

ORDER DIRECTING FILING OF OPINION—December 20, 1950

Ordered that the typewritten opinion this day rendered by this Court in above causes be forthwith filed by the Clerk.

[fol. 375] IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 12,743

MIRIAM CHRISTINE STEVENSON, Formerly Burroughs, nee Kenkel, Alias Miki Ashton, Appellant,

vs.

HERMAN R. LANDON, District Director of the Immigration and Naturalization Service, United States Department of Justice, Appellee

No. 12,744

DAVID HYUN, Appellant,

vs.

HERMAN R. LANDON, District Director of the Immigration and Naturalization Service, United States Department of Justice, Appellee

No. 12,745

HARRY CARLISLE, Also Known as Harry Carlyle, Appellant

vs.

HERMAN R. LANDON, District Director of the Immigration and Naturalization Service, United States Department of Justice, Appellee

OPINION—December 20, 1950

Appeal from the United States District Court for the Southern District of California, Central Division

Before Stephens, Healy and Bone, Circuit Judges

STEPHENS, Circuit Judge:

These appeals in the above entitled cases were decided and order entered on the 16th day of December, 1950, coincident [fol. 376] with the decision and order in a like proceeding entitled *Carlson* v. *Landon*, No. 12,742. We noted in our memorandum, filed on the same date, that opinion in each case would follow. We combine the three in one opinion. The facts in each of the instant cases very largely parallel those set out in the *Carlson* case. The dates of the essential facts are not exactly the same in either case, but the vari-

ation of eve... and the dates of their happening are not great enough to make any particular difference. The applicable law, the principles applied and the reasoning and authority relied upon and set out in the *Carlson* case rule these cases and therefore we make specific reference thereto without repetition herein. The following alleged facts, undenied in the pleadings, are set out under the names of the three petitioners. Details as to each petitioner are set out in the petitions and we state their essence very briefly:

Stevenson

Petitioner Stevenson was born in England in 1919. At the age of 12 years she was taken to Canada with her family. She entered the United States in 1923 and since has resided in Los Angeles, California. With her mother she visited Canada in 1928 for a few hours and later in the same year she went to Mexico for a few hours where she was married to a United States citizen. In 1929 she made inquiry of the Immigration and Naturalization Service as to applying for citizenship but her legal entrance into this country was questioned.

Hyun

The petition for Hyun sets out a seemingly long period of limited restraint under a bail bond given under an arrest for deportation prior to the amendment to the immigration laws by the Internal Security Act of 1950, and complete restraint without bail since October 21, 1950, under an arrest for deportation pursuant to such amendment.

Petitioner Hyun was born in Seoul, Korea; is 33 years of age; was taken to Hawaii at an early age and resided there until December, 1947. His schooling resulted in a bachelor of science degree. In school he appears to have been a leader in social and religious activities. Although disqualified for military service during the late war because of his status as an alien, he became Captain of Re- [fols. 377-402] serve Officers Training Corps at the University of Hawaii. He has applied for citizenship; is married and has two minor sons. He has resided in Los Angeles, California, since December, 1947, and has engaged in a useful occupation. Petitioner's petition is replete with a detailed account of his life. He denies that his release would be detrimental to the United States in any manner.

Carlisle

The petitioner Carlisle was born in England in 1897 and has resided in Los Angeles, California, for the past 15 years.

The orders in these cases dated December 16, 1950, are alike and are the same as in *Carlson* v. *Landon*, No. 12,742, 9 Cir., — F. 2d —. The text of the orders is repeated, to-wit:

The judgment is reversed and the cause is remanded with direction to the district court to take the undenied material allegations of petitioner's answer as true and to give the Director an opportunity to reveal reasons for exercising his discretion, if he did exercise discretion in denying bail, and to take note of facts relating to delays in the deportation hearings, and decide the issue upon such evidence and any other proper evidence which may be offered and received, all in conformity with this opinion.

Reversed and remanded.

(Endorsed:) Opinion. Filed Dec. 20, 1950. Paul P. O'Brien, Clerk.

[fol. 1] IN THE UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION

Honorable Ben Harrison, Judge Presiding

No. 12491-BH Civil

In Re: FRANK CARLSON, also known as SOLOMON SKOLNICK, for Writ of Habeas Corpus.

No. 12492-BH Civil

In Re: MIRIAM CHRISTINE STEVENSON, etc., for Writ of Habeas Corpus.

No. 12503-BH Civil

In Re: HARRY CARLISLE, also known as HARRY CARLYLE, for Writ of Habeas Corpus.

No. 12505-BH Civil

In Re: DAVID HYUN, for Writ of Habeas Corpus.

Reporter's Transcript of Proceedings

Los Angeles, California

November 7, 1950

[fol. 2] APPEARANCES:

For the Government: Ernest A. Tolin, United States Attorney, Los Angeles 12, California; by Walter S. Binns, Assistant United States Attorney; and Ray H. Kinnison, Assistant United States Attorney.

For Carlson: Margolis & McTernan, 709 Rives-Strong Building, 112 West Ninth Street, Los Angeles, California; by John W. Porter, Esq.

For Stevenson: Rose S. Rosenberg, 709 Rives-Strong Building, 112 West Ninth Street, Los Angeles, California.

For Carlisle: Stanley Fleishman, Esq., 1014 North Argyle, Los Angeles, California.

For Hyun: Milton S. Tyre, Esq., 902 Quinby Building, 650 South Grand Avenue, Los Angeles, California.

Amicus Curiae: A. L. Wirin, Esq.

[fol. 3] Los Angeles, California; November 7, 1950, 10:00 o'clock A. M.

The Court: You may proceed.

The Clerk: In the matter of the petition of Frank Carlson, Miriam Christine Stevenson, Harry Carlisle and David Hyun, appearing on order to show cause and motion to strike.

Mr. Kinnison: The Government is ready, your Honor.

Mr. Porter: We are ready.

The Court: I am not going to spend any time on preliminaries in this matter. It is my understanding it was continued over to this morning to hear the cases on their merits and we are going to proceed with the merits and determine whether there has been an abuse of discretion by the Attorney General.

In the meantime there have been a number of motions filed with me. That being so, I cannot hear the matter this week unless we can finish it today.

As I stated before, the burden is upon the petitioners to show that there has been an abuse of discretion. We are right now where we were before, except you have had time to get your breath. We are going to proceed on that basis.

Mr. Porter: If your Honor please, we are prepared to go forward at this time on the basis that the petitions as amended in the case of petitioner Carlson, alleges facts establishing an abuse of discretion by the Attorney General and the respondent District Director in this matter, [fol. 4] none of which facts are denied; and that the return filed by the respondent in No. 12491, in the matter of Carlson, and I understand in the other cases identically, tenders no issue of fact in these respects.

So, on the basis of authorities which I will be glad to submit to your Honor now or at any time your Honor may desire, we must take it that the allegations of the petition which are undenied, are established as true.

The Court: But all you have made is a statement to the effect that their background is such and such. You have recited many things about their background but the Attorney General in his answer, or the Immigration Department, alleged that they are not good security risks.

Now, I think that is the only issue in the case—that is an issue of fact.

Mr. Porter: I differ with your Honor.

The Court: I don't think your allegation that there has been an abuse of discretion, just that bald statement, is sufficient to raise any particular question. That is a conclusion of law.

Mr. Porter: That is my summary of the facts of what the petitioner alleges, but the petition itself, your Honor, alleges specific facts on the relevant issues in connection with these applications.

[fol. 5] The Court: Just a moment. Have you any evidence to offer?

Mr. Porter: We have no evidence to offer because there is no factual issue upon which we can go forward.

The Court: The petitions will be dismissed if you have no evidence to offer.

Mr. Porter: I ask the court's permission to state my position on the record.

The Court: You may do that.

Mr. Porter: The respondent's return in the matter of Carlson alleges no facts whatever. It simply alleges in the first paragraph that the respondent is holding the petitioner in custody under what it calls proper and lawful authority, which is purely a conclusion of law. No facts are stated there.

The second paragraph needs no discussion. It alleges the issuance and service of a warrant in the deportation proceeding and raises no issue as—that paragraph raises no issue.

The third paragraph states as a pure, naked, unsupported conclusion that there was reasonable cause to believe that if the petitioner were released on bail he would engage in activities which would be prejudicial to the public interest and would endanger the welfare and safety of the United States.

In the first place, such a pleading by way of conclusions [fol. 6] tenders no issue which we could meet if we knew what the issue was, and under cases which I can cite to your Honor, including Stratton vs. Commissioner, in the Second Circuit, and other cases which I can continue with if your Honor desires.

Such a return is totally insufficient, raises no issue, and on the face of the record as a matter of law the petition should be granted.

Now, we are not prepared, your Honor, to assume a burden which does not rest upon us as a matter of law. The respondent here has submitted nothing which we are able or willing to meet.

As we have alleged in the amendment to our petition in the Carlson case, No. 12491, we are informed and believe that the basis upon which the respondent is acting here is this conclusion which he sets out in paragraph 3 of his return, and we allege by way of denial that there is any reasonable cause or any cause at all for that conclusion and that we have no information, nor have we been able to get any information, as to any fact or facts or anything resembling a fact, if your Honor please, to support any such conclusion on the part of the respondent.

We have further alleged that the petitioner in this case, the Carlson case, has never in the past engaged in activities which can be criticized in this fashion; that he has [fol. 7] no plan, intention, desire or purpose to engage in any such activities in the future if he is enlarged upon bail and that we have no means whatever of knowing what issues to meet if we were going to go forward with evidence this morning.

Now, it is the sheerest and clearest kind of a denial of due process of law to this petitioner, we submit, if the court holds that we are in the position of having to go forward to meet a showing which has not been made here by the respondent. The respondent in effect says, "I am holding this man because I think it is a good idea that he be held."

We have no means of knowing on the basis of what facts, if any—and we deny that there are any facts—which would support reasonably any such conclusion, but if they think they have facts on this let us hear them—let us find out what they are.

Under the cases the respondent here has the right, and I think the court has the duty to direct the respondent to file an amended or supplemental return which will be sufficient as a matter of law to tender an issue.

The Court: If I do that, gentlemen, then you will be here another week. Last week I tried to expedite matters

so you could get it before the Circuit Court while they are sitting here and save you the trouble of going to San Francisco.

I made my position clear, quite clear, last week but you [fol. 8] seemed to think because I suggested it that I was suggesting something against your interests.

I have been trying to expedite this matter so if you don't agree with me you can take it before the Circuit Court while it is in session here and save you a trip to San Francisco.

Mr. Porter: Well, we have no disposition to do anything other than expedite this matter, your Honor, nor do we have any disposition to do anything other than conform to the law—make the showing which is required of us and then rest upon that showing unless and until there is a responsive showing to the contrary.

Now, in the case of Whitten, 160 U. S. 231, the Supreme Court stated that in a petition for a writ of habeas corpus, which is duly verified, the facts alleged there may be taken to be true unless denied by the return or controlled by other evidence.

The same rule, in effect, was stated by Judge Denman in Ex Parte Duncan in this Circuit, 146 Fed. (2d) 576.

The same rule is stated in an extremely lucid and helpful opinion in the Court of Appeals for the District of Columbia in Hammerer v. Huff, 110 Fed. (2d), 113, where the court said this—which bears so directly upon our situation here. The facts there were extremely complicated and I think it is sufficient to say simply that the petition for the writ there alleged certain facts as to rep- [fol. 9] resentations made to the trial court at the time of imposition of sentence upon the petitioner. With respect to those allegations of fact, the Circuit Court said this:

> "This was not denied in the appellee's"—that is the respondent's—"return to the writ and therefore under Rule 8(d) of the Rules of Civil Procedure for the District Courts of the United States"—with a citation—"stood admitted in the trial court in the instant case."

And to the same effect is another statement by the Court of Appeals for the District of Columbia in the case

of Doris vs. Gill. That is a most elaborate and extremely illuminating opinion reviewing all of the various alternative procedures which have been invoked and can be utilized by the trial court in——

The Court: Now, Mr. Porter, if you feel this return is not sufficient I will give the United States Attorney a week to file an amended return if he feels it is necessary and we will continue the matter for another week.

Mr. Porter: Your Honor, I have already asked the United States Attorney whether he intends or desires to file an amended return.

The Court: I don't know what he intends to do. I continued this case yesterday and I feel I have been misled and [fol. 10] I don't like it, by the representations that were made to me that we would go ahead with the evidence this morning and we wouldn't take up the time with argument.

I told them yesterday that when you get started it is hard to get you stopped and I wasn't going to take up all day listening to your argument; that if you were going to argue the case you would have to argue it yesterday afternoon. I am not saying that in criticism of you, Mr. Porter, but when you get started talking you never can quit and you get so enthused and so worked up about your case which is just your characteristic. I also have characteristics that people don't like sometimes because I talk too much. I know that, so you and I have something in common in that respect.

I said if there were any legal points to be raised after our hearing of last week I would continue it until this morning and then I came down this morning to find a great many new questions raised

Now, if there are any questions I am going to continue it a week for further hearing. I don't like that because these people are in custody and if I am wrong, why, they are being deprived of their liberty, but you have invited it.

Mr. Porter: Well, I dispute that with all respect to your Honor, and I submit to your Honor that we are raising now the very merits of this action.

Merely because it takes the form of a motion to strike [fol. 11] or because I am up here arguing instead of some-

body being on the witness stand doesn't mean we are not reaching the merits, your Honor.

We are reaching to the very heart of this thing and we say to your Honor that if these respondents are not willing or are unable in either case to show any reason why he is holding these people in custody, then we are entitled as a matter of right to their release and it is the duty of the court to accord that right to them.

Now, we say that on the face of this record made by the respondent himself in his own return. He shows that he is either unable or unwilling to show any fact which justifies the action that he has taken and is continuing to take, and we say on the merits of the record——

The Court: Does each one of counsel want to argue the point?

Mr. Wirin: I wanted to make an observation when Mr. Porter is through, in connection with this point generally.

The Court: I am not going to listen all morning to one man and then have the rest of you get up and repeat the same thing.

Miss Rosenberg: I stand on Mr. Porter's argument and I wish to add this at this time, that I do not believe he has been prolix or has been verbose. I think he has come directly to the point, your Honor, and it would be prejudicial to our clients if Mr. Porter did not make in fact [fol. 12] the argument that he did.

The Court: Does anyone else have anything to say?

Mr. Wirin: I will follow Mr. Tyre.

Mr. Tyre: I have this observation to make, your Honor. We don't intend to mislead the court. I think there was some chamber conversation *about* we will probably get down to cases today, and I do think this is getting down to cases.

We are discussing here now whether or not, if no evidence whatsoever is presented, whether or not an issue has yet been presented by the Government.

I am not fully aware, frankly, of all the allegations of the other petitioners. I am quite aware of the allegation of my own, in the case of David Hyun, and I think honestly and sincerely we have set forth in the verified

petition virtually all the facts which can possibly be set forth to show what happened.

The Court: If I may ask, don't you all set forth the second warrant of arrest—allege that in your petition?

Mr. Porter: I do.

Miss Rosenberg: Yes.

Mr. Fleishman: Yes.

Mr. Tyre: It is virtually the same as the first petition with the additional facts that have occurred since the filing of that petition, and that would be only the question [fol. 13] of the second warrant of arrest, about which there is some legal aspects still pending, but we are not going to argue that this morning.

We have made a point in the petition and your Honor indicated he wants to get to the merits and that is what we are discussing now, we have alleged in that petition everything that we can possibly imagine concerning what could or could not be deemed the background of the individuals to show whether or not if they were at large at this time they would be a threat or danger to the community.

Now, we can't allege, your Honor, any more. We couldn't prove any more than we set forth in the petition.

Now, if the Government has any basis, your Honor, for filing a return which alleges some facts we then have an issue tendered.

Now, I am aware of the Second Circuit case, the Potash decision. That case says it is necessary to show by clear—and a preponderance of the evidence—clear and convincing evidence, is the exact language, that the petitioner should prevail. However, I want to point out in that case there is nothing to indicate what was stated in the original petition for the application for a writ of habeas corpus.

Now, for all that we can tell from reading that decision, all that was stated was that the United States Attorney for and on behalf of the Attorney General, has merely exer- [fol. 14] cised a discretion and alleged no reasons or basis whatsoever and the Government did take the position in that case that it didn't have to be reasonable; that it could be arbitrary.

The question then was referred back to the District

Court and they said the burden was on the petitioner. Apparently the only thing that was left at that point was whether or not an arbitrary discretion was exercised.

Now, here we have gone a lot further than that. We said it is arbitrary because—and we have alleged all the background facts which in my petition take up six, seven or eight pages in giving nothing except what has happened to this particular individual in connection with the Immigration and Naturalization Office.

If the Immigration and Naturalization Office, by the United States Attorney, will allege any facts controverting the facts which we have given then we have an issue tendered upon which it may be necessary at that time to present evidence. But at this time the return says absolutely nothing except—this one contains nothing but this one sentence, your Honor:

> "There is reasonable cause to believe that if the petitioners were enlarged on bail they would engage in activities which would be prejudicial to the public interest and endanger the welfare and safety of [fol. 15] the United States."

Which I think is nothing more than saying that: "We have a right to exercise discretion arbitrarily," because that is all the Attorney General has said.

> "We believe that he is a danger to the safety and a threat to the security of the public interest. We think so and that is that. That in itself is an allegation that we still think we have the arbitrary discretion to determine this one way or the other by ourselves."

Now your Honor has already indicated that he doesn't think the Attorney General has such an arbitrary discretion. If so, then it is clear this allegations of paragraph 3 is nothing but a conclusion of law and is immaterial if they exercised it arbitrarily, which, incidentally, there has been a traverse filed to that denying for whatever value it may have, but there is nothing there to indicate any possible basis in fact why these people are held.

If they would alleged why they are being held then we would have an opportunity to deny it and put on evidence.

to show that what they say is not true, or if we admit it is true an issue would be tendered. But at this point, if the court please, I don't think the second court decision requires on the basis of our own pleadings that the petitioner come forward with evidence at this point.

[fol. 16] And, your Honor, I just want to make this one observation. You have made it frequently. I want to reiterate it. And that is that these persons are being held at this time incarcerated without bail, without an opportunity to earn a living. It has been going on now since October 21.

I concede a certain part of it is due to the fact that we are arguing this matter but I think that is inevitable. These petitioners are entitled to counsel and entitled to every right under the law.

Now, I believe that a petition for a writ of habeas corpus should be heard in a summary manner, as summary as possible. The United States Attorney twice has had an opportunity now to file a return, at least in the Hyun case, and in two petitions, in two proceedings, they have failed to allege anything other than "We believe we have the arbitrary discretion of exercising it," and under those circumstances if the court should feel it is necessary to allow the United States Attorney to file an amended return, I believe in all good conscience and fairness to these petitioners that pending the filing of that return they should at least be admitted to bail, the same bail that was previously posted.

I want to point out this one more thing and then I am through, your Honor, and that is this, that up until just three or four weeks before this arrest, at least by implication and perhaps by direct reference in the Hyun matter, the Immigration and Naturalization Service saw noth-

[fol. 17] ing wrong or dangerous in permitting David Hyun to be at large. If you recall the allegation in my petition, I had written a letter to the commissioner in Washington, D. C., asking that Mr. Hyun be permitted to be enlarged at bail with the requirement that he report monthly be eliminated from his $2000 bail, because it was inconvenient and we didn't think it was fair or proper.

The commissioner answered that letter, late I think in

September, I think September 21st, if I am not mistaken, or approximately then. We received a letter from the commissioner stating that he received my letter and he didn't think it was proper to allow Mr. Hyun to be free without having to report monthly. Nothing was said that the $2000 bail wasn't proper or that he was a danger or a threat to the community.

The further statement was made that I should take the matter up with the local director and perhaps a more convenient time and place for reporting could be worked out for Mr. Hyun's convenience.

That was just a few weeks before this occurred. It seems to me on the face of that record, your Honor, the Government saw nothing dangerous or imminently a threat by Mr. Hyun's being at large on bail pending final deportation proceedings.

Maybe they have information they didn't want to divulge [fol. 18] at that time or maybe they think something happened in the 3-week interim. We have no way of knowing. But we think in all fairness and justice, which we believe is part of the due process to which aliens as well as every other person in this country is entitled, there should be some sort of hearing, either by the commissioner himself or, if he doesn't want to have a hearing, there should be allegations of facts set forth before this court so the court can see whether or not any real issue is tendered and pending such facts being allegad in the return I again respectfully ask that this court permit the petitioner to be enlarged on bail.

Mr. Wirin: I would like the court's permission to say just a few words and I shall not repeat the arguments which have been made.

The Court: Did you ever say a few words in your life and quit?

Mr. Wirin: This is once I am going to be an exception to my own rule.

If I may say so, your Honor, respectfully, with respect to the Potash case which your Honor said you would follow, the case itself and even the law draws a distinction between carrying the burden of proof and proceeding forward with the evidence. And there isn't any question that

the Potash case is, if your Honor follows it, is authority for the rule that the burden of proof to demonstrate an abuse of discretion is upon the petitioner; but that does [fol. 19] not necessarily mean that the petitioner must take the witness stand and that the burden of offering evidence or proceeding with the evidence is necessarily upon him, for it may be that he may be able to carry that burden of proof by the pleadings, by the showing made by the respondent and may be able to carry it by clear and convincing evidence without having to take the witness stand.

Now, that is my reading of the majority opinion and I think the concurring opinion by Judge Clark, which in a way at first blush and at one point seems to highlight the summariness of the judicial proceeding, namely, that the court will not review all matters, on the other hand I think supports the point which I have just made.

Judge Clark says:

"It would seem that to justify such—"

And this is one page 753 of the report:

> "It would seem that to justify such confinement here there must be better evidence than has been presented in the past and that some at least should be disclosed to the District Court to avoid the charge of arbitrary decision."

Now, let us look at this language. In the first place, the word is "justify." How do you justify? You put on evidence or you have a burden of proceeding with evidence in [fol. 20] order to justify a position. Moreover, after using the word "justify" in this broad sense, the next sentence talks about the duty of the respondent to put on better evidence than was adduced in other cases to show that the action wasn't arbitrary and then it concludes with the observation that it should be disclosed to the District Court that the action was not arbirary.

Now again I say, Judge, that doesn't mean the burden—the burden of proof is upon the respondent but it may be that under certain situations the burden of adducing some evidence, as Judge Clark said, and certainly Judge Clark's views were accepted by the majority be-

cause all Judge Clark did was concur with the majority and then expressed himself.

Now, then, I submit to the court that the bare, naked allegation which has been referred to by other counsel, and I promised I wouldn't repeat, made in the return now is not adducing to the court of any evidence to justify the detention and isn't a disclosure to the court of any matter. "Disclosure" means disclosing evidence, disclosing facts. It is the barest kind of naked allegation.

The situation is simply this: I am the Attorney General. I am the agent for the Attorney General. He doesn't even say that he is the Attorney General or that the respondent has reasonable cause to believe anything. He said there is reasonable cause to believe. What that means I don't know. That if enlarged the petition would engage [fol. 21] in activities, unnamed, unmentioned, that would be prejudicial to the public interest.

What are activities prejudicial to the public interest? Are they activities which the Attorney General or the persons who issued these orders consider inimical to the interests of the country?

It might very well be that a court which is more dispassionate, less concerned with the treatment of aliens, would consider them not prejudicial.

Now, I am about through. In other words, it seems to me that upon the showing now made the petitioners are entitled to release because the showing made is utterly inadequate in view of the specific factual allegations pertaining to the conduct and the background of the petitioners contained in their petition, which is undenied, and in view of the barest kind of a general conclusion, without disclosing any facts made by the respondent, and if that isn't true certainly I would urge upon your Honor that the petitioners are under no legal requirement to take the stand and to adduce evidence unless and until there is some kind of a showing in the form of evidence, in the form of a disclosure or evidence, as suggested and indicated by Judge Clark, by the respondent in this case.

I think I have been brief.

[fol. 22] Mr. Fleishman: I would like to say a few words so as to tie this in on behalf of petitioner Carlisle.

A demurrer has been filed highlighting some of these

uncertainties and ambiguities in the return and specifically I would like to relate again to what I know of the Government's charge against the petitioner Carlisle.

As I indicated at the previous hearing in response to a demand for a bill of particulars, the Government alleged that they charged that Harry Carlisle had been a member of the Communist Party between 1933 and 1936 inclusive.

Now I assume that this is what they mean when they say that Harry Carlisle if enlarged on bail would engage in activities that are inimical to the interests of this country.

Really I don't know whether because between 1933 and 1936 he was allegedly a Communist that therefore he should now be denied bail as a dangerous person.

I don't know whether I am supposed to try to meet that issue or not, or whether there is some other fanciful issue that I should try to meet.

The Court: Now, gentlemen.

Mr. Fleishman: Just one other point, your Honor, and that is I have a situation similar to the one Mr. Tyre called to your Honor's attention. Mr. Carlisle was arrested in June of this year. His then attorney wrote to Washington alleging that he thought $5000 bail was an awful lot of money and it should be reduced and Mr. [fol. 23] Reilly (phonetic) from Washington—I think he is Acting Assistant Commissioner in the Enforcement Division—wrote at that time:

> "Careful consideration is given in each case to all the relevant factors before the amount of bail is set. In the instant case it was concluded that $5000 bail was appropriate. I can see no reason to alter that conclusion."

Now, we have alleged in this petition that all of the relevant factors are the same now as they were there and assuming, as we must, that the Attorney General or his deputies properly exercised their authority, and found that Mr. Carlisle was not such a danger as to be kept in jail without bail, the same facts are still true today so far as we know and again Mr. Carlisle should be allowed out on bail.

The Court: What does the Government have to say?

Mr. Binns: Well, your Honor, I can suggest very easily to counsel that they are far more learned than I am. If I were representing these people and wanted to create an issue here I would have alleged in my petition a denial of the statement in the warrant of arrest that these four people are members of the Communist Party.

If you will notice, your Honor, they take some 10 pages to file a petition but they never get around to that particular point.

[fol. 24] Your Honor, I feel that I am a little bit at a loss here as to exactly where we are. As I understand now, we are on an order to show cause as to whether or not a writ will be issued.

I think the proceedings, your Honor, are that they filed the petition and then they have a hearing to see whether or not their petition sets up facts which would justify the court in having a hearing.

I feel that in these instances their petitions, being so carefully worded as to avoid any mention of the real gist of this matter, that those petitions in and of themselves don't justify the issuance of a writ.

Now, then, your Honor, our return is in a sense, after a writ, our return is the first pleading to that. They filed a traverse. It is never anticipated that the Government deny seriatim all the allegations in either the petition or the traverse. All that the Government does in a return is state the reason that they hold a man. We have set forth here very completely—of course, I noticed in reading just a few moment ago the Potash case, that in that case exactly the same situation prevailed that prevails here and it was commented on by the Circuit Court in their decision. It is on page 749.

The third paragraph of it says:

> "The petition for writ of habeas corpus does not [fol. 25] specifically meet the serious charge of the warrant of arrest that relator is a member of or affiliated with an organization which advocates the overthrow by force or violence of the Government of the United States."

If you will notice here, your Honor, with all of the papers that we have gotten in all of these hearings that that has never even been mentioned.

Mr. Porter: May I just add a couple of footnotes on this matter, your Honor?

The Court: You have pretty large feet too, haven't you?

Mr. Porter: I am very sensitive about that, your Honor.

First of all, with reference to Mr. Binn's last comment about the Potash case, there is a very simple answer in spite of what he points to as a deficiency in the petition.

The court there concluded that these men should be released on bail.

The Court: Wasn't that remanded?

Mr. Binns: Yes?

The Court: That the bail of $5000, anything more than $5000 would be excessive.

Mr. Porter: That is correct. In spite of the omission, as Mr. Binns would say, from the original petition.

Now, on this question of the procedure which Mr. Binns I think is really not as confused about as he would have us [fol. 26] believe, in the case of Doris vs. Gill, which I mentioned before, Judge Stephens of the Court of Appeals for the District of Columbia, reviews at great length, as I mentioned, the background and development of the habeas corpus writ and procedure and sets out—I think there are 10 alternative methods of handling an application for habeas corpus, which he lists seriatim.

No. 6 of those is the procedure which we find followed in these cases—that is the issuance of a rule to show cause why a writ should not be granted to which the relator may respond.

Then Judge Stephens goes on to say this:

> "If the procedure suggested in 6,"—that is, the order to show cause procedure is followed—"the judge may find that the facts admitted in response to the order to show cause entitle the petitioner to the writ and to a discharge forthwith as a matter of law."

And the court there cites Ex Parte Quirin, 317 U. S., 1; Walker vs. Johnston, which is in a later volume of the Supreme Court reports, 316 U. S. 101, and there are numer-

ous other cases to the same effect, if your Honor please, including Price vs. Johnston, which originated in this Circuit and reported at 125 Fed. (2d), 806, and subsequently went to the Supreme Court where it was there affirmed.

[fol. 27] And in that court, the Supreme Court, the opinion remarks that the Government's response to the order to show cause was too indefinite and vague to give petitioner a fair opportunity to meet the important issues, words which might well have been addressed to the situation before us now.

Now, there is a Second Circuit Court case earlier than the Potash case, if your Honor please, which comes very close to home at the present time.

The Court: What is the name of that case?

Mr. Porter: It is Price vs. Johnston.

The Court: You said there was an earlier case.

Mr. Porter: Yes, I am about to give that to you.

The Court: Is that the Zap case?

Mr. Porter: This is United States Ex Rel. Bieloszycka vs. Commissioner of Immigration, reported at 3 Fed. (2d), 551.

This was a petition for writ of habeas corpus to review an exclusion order which was based on a finding and commitment of the relator for insanity or mental illness of some sort.

The return merely alleged that the respondent was holding the petitioner or relator under a warrant, a copy of which was attached to the return.

The trial court took testimony on the facts of the case, and so on, and discharged the writ.

On appeal the Second Circuit had this to say—it af- [fol. 28] firmed the action of the trial court so far as the result was concerned in discharging the writ, but it said, and this is a quotation:

> "The ordinary and proper practice is to show by the return exactly what the Department of Labor,"—as it was then called—"exactly what the Department of Labor through its various boards and officers had done in the premises."

The commissioner failed to do that and the return was insufficient.

The court then went on to say that the trial court in taking testimony had held the same kind of hearing that ought to have been had and in that situation had been had by the board of special inquiry of the administrative office.

"The practice"—said the court—"is strongly disapproved.

"It is substantially a usurpation by the courts of those duties of investigation and fact ascertainment which the statute imposes on the Department of Labor. The court below had no right to conduct what was substantially an original investigation; its function was to investigate what the Department of Labor produced as the result of its own investigation."

Now, I recognize that that case is not on all fours for [fol. 29] the reason it was a review of a final order of the administrative body, but the logic and the procedural approach expressed in the opinion of the Circuit Court of Appeals is just exactly as applicable, I submit, to a situation where the question is on what basis the respondent administrative agency deems it necessary or proper to hold these people in confinement.

One more brief point and I am through. The grounds alleged in the return in paragraph 3—there is this sweeping conclusion about reasonable cause to believe, and so forth. That turns out, if your Honor please, on examination, to be in precisely the language of one of the provisions of the Immigration Act of October 16, 1918 as recently amended by the McCarran law and is a separate and independent ground for deportation under that law.

Section 22 of the McCarran law amends the Act of October 16, 1918 as previously amended, so as to add a number of grounds for deportation not previously set forth in the law. And the very first of those, if your Honor please, the very first of those is this, stripping away the preliminary language, that the person entered the United States to engage in activities which would be prejudicial to the public interest or would endanger the welfare or safety of the United States. It is word for words, the language of paragraph 3 of their return.

[fol. 30] So, what they are saying, if your Honor please, in addition to or apart from the fact that their conclusion amounts, as Mr. Tyre said, to nothing but a declaration of their plenary discretion, what they are saying is that these people who are charged in the deportation proceedings were deportable on ground (a) are being held without bail indefinitely pending determination of deportability because they are deportable on ground (b).

Now, I submit, your Honor, that that is the height of arbitrary abuse of process and discretion on the part of the respondents in this matter and I join heartily in all that has been said by my fellow counsel, Mr. Tyre and Mr. Wirin and Mr. Fleishman, and I earnestly submit to your Honor the propriety of a ruling, first, upon my motion to strike and I take it Mr. Fleishman has filed a demurrer to the return.

I then have an answer or traverse which I am prepared to file and on that basis I submit to your Honor that the petitioners have amply shown a basis for their discharge on the state of the present record.

The Court: Gentlemen, I haven't changed my original viewpoint on the approach to this case. I have memorandums from various cases.

Section 156 was first called to my attention, I believe, by Mr. Porter. I believe he referred to it as the McCarran amendment where bail was increased very substan-

[fol. 31] tially, and in that case I went along with the Second Circuit's ruling and held that unless there was some showing that the bail in excess of $5000 would be unreasonable. And in that study it developed that the first matter to come, I believe, before the Second Circuit was the provision in the bond that required reporting. The Second Circuit held that that could not be made a part of the condition of the bond.

Then comes along the McCarran Act and adopts in part the ruling of the Second Circuit and reverses it in part by making it a condition of the bond and a requirement for reporting.

In the Wong Wing case, reported in 163 U. S., 228, which was an opinion written by Chief Justice Taft, he emphasized that which is emphasized in other cases, the power of Congress to exclude aliens altogether from the United

States or prescribe the terms and conditions upon which they may come to this country and to have its declared policy in that regard enforced exclusively through executive officers without judicial interference. That is settled by our previous decisions. And then I notice that Judge Jenney followed the same in Ex Parte Perkov, Federal Supplement, 864, where he stated:

> "There is then no power in the United States Courts to admit to bail in immigration cases. Congress has reposed the discretion in the Attorney General and [fol. 32] there it must remain. This the petitioner admits in his later brief. He argues, however, that under the statute and the facts he must be deported to the country of his nativity, and wartime conditions make it impossible to deport him to Yugoslavia. Consequently, the argument continues, denial of bail pending the final disposition of this cause constitutes a flagrant abuse of the discretion vested in the Attorney General."

Then we come along to the Zapp case which also holds, and that is found in 120 Fed., 762:

> "It is well established that the expulsion of aliens is the sovereign power necessary to the safety of the country, to be regulated by the legislative department by such statutes as it deems wise policy to require. Deportation, however had on the individual, is not punishment. It is a proceeding civil and not criminal in nature. We think it quite clear that the right of Congress to provide for the elimination of undesirable aliens is not hampered or limited by the fact that such aliens may have become entangled with other prohibitions of the law. Proceedings in deportation matters are entirely apart from any proceeding to enforce the criminal laws and must proceed according to the [fol. 33] statutes relating to them."

Then we jump over into the Potash case which has been referred to here and I might say—or in the Zapp case—was the first time it was written in the law, that the immigration authorities had the right to hold, to retain in custody or admit to bail or grant parole. Then we jump

over into the Potash case which we have discussed here this morning, and among other things it says:

> "However, in any consideration of denial of bail it should always be borne in mind that the court's opinion as to whether the alien should be admitted to bail can only override that of the Attorney General where the alien makes a clear and convincing showing that the decision against him was without a reasonable foundation. In the absence of such proof, the administrative determination is final. If the Eighth Amendment to the Constitution is considered to have any bearing upon the right to bail in deportation proceedings, and this has been denied, it is our opinion that the provisions of that amendment and any requirement of the due process provisions of the Fifth Amendment will be fully satisfied if the standards of fairness and reasonableness we have set forth [fol. 34] regarding the exercise of discretion by the Attorney General are observed."

The sum and substance of my holding is this, that this is a matter that is within the discretion of the Attorney General; that when he issues his warrant that the burden then shifts to the petitioner in a habeas corpus proceeding to establish by clear and convincing showing that the Attorney General has abused his discretion.

It is the natural presumption that an administrative officer is performing his duties and anybody attacking the administrative body would have the burden of establishing that he was in error.

Here we have the case where warrants were issued and I take the position that the burden then shifts, as long as the evidence is here of the warrants having been issued, before the court, that then the burden shifts to the petitioners to establish by clear and convincing evidence that there has been an abuse of discretion.

In other words, I am right now where we were the other day when you people dismissed your petitions, and I am going to, whatever you call the motion to strike or demurrers, and so forth, deny your motions and I am going to give you that opportunity now, gentlemen.

There is no use of camouflaging this picture. The Gov-

ernment claims these people are dangerous to the security [fol. 35] of the United States and you are here as their attorneys, and rightfully so, defending them against that charge and I am giving you that opportunity to assume the burden that I feel is upon you in attacking a warrant issued under the authority of the Attorney General of the United States.

I often think of counsel in representing people this way, that if they wanted to be fair why not put them on the stand and have them testify as witnesses. Why not get down to the merits of this case?

All of you know that if the Communist movement should succeed you would all be out of a job.

It is like a lawyer told me when I first started to practice law: "Don't depend upon the code entirely because the legislature might come along and repeal it." So, if a Communist movement were to succeed in this country we wouldn't have any laws. You wouldn't be able to say that you are attorneys at law any more because there wouldn't be any law that you were familiar with or under which you could act.

But that is neither here nor there. These people have a right, and I am not criticizing counsel—I don't want to be taken as criticizing counsel. These people have a right to be represented in this court and be heard and it is your duty as their attorneys to present their cause, but I cannot be entirely unaware of the activities that are going on around us every day.

[fol. 36] I have tried to keep myself free from any hysteria that may be in the wind these days and that may have caused the amendment to the McCarran Act, but I believe if this was the same situation as in the Potash case, and we had a rule established there—that wasn't a Communist case. That was a German national that they were dealing with, but it sets down virtually the same rule of law as we have here except the Potash case is in line with this case.

We have people here that the Attorney General in the exercise of his discretion has held to be dangerous to the security of the United States and this court is not going to release them unless they make a showing to overcome that presumption.

Mr. Tyre: Might I just make one other observation on the point that you have just raised?

The Court: Yes.

Mr. Tyre: I want to raise this point. It deals directly with the point you have just made and that is the threat that exists of Communism in the United States. I don't think anyone contends that there is a successful Communist movement now.

The Court: They haven't been successful so far.

Mr. Tyre: That is right.

The Court: And you are not stopping it any either.

Mr. Tyre: I don't think anyone contends that I think [fol. 37] within that framework.

We are then faced with the situation that Mr. Justice Jackson faced in the Williamson case.

Now, I know your Honor has many times during the course of these proceedings distinguished cases on the ground that they were criminal cases.

The Court: I do not differ with Justice Jackson nor do I differ with our Circuit Court in the Bridges case because after a court has certified that there was probable ground for their release I don't see what else could happen.

Mr. Tyre: Let me say this, your Honor. Now, in the Bridges case Mr. Justice Healy didn't even discuss the question of security to the United States if Mr. Bridges were at large. He said that it was as astonishing or startling as it was novel; but Mr. Justice Jackson does discuss it. Mr. Justice Jackson when he granted bail not to 11 defendants in general but to 11 persons who were then the executive board of the Communist Party of the United States, and admittedly so, he granted them bail pending appeal, not on just the traditional and well-established grounds that are usually in a criminal appeal, but on the very unusual premise as to whether or not they were a danger to society pending the appeal.

Now, he didn't talk at all about the fact that this was normal in a criminal case. As a matter of fact, Mr. Justice [fol. 38] Healy indicated this whole question of danger was immaterial.

The Court: That was true in the Bridges case because Bridges was charged with perjury.

Mr. Tyre: Mr. Jackson does not say it is. He goes on

the question of whether or not a substantial question was raised.

With all due respect to the Second Circuit, I think there is a substantial question.

Government counsel said in their argument that they could not release the 11 members of the executive board of the Communist Party pending appeal because they were dangerous to the security of this country.

If I assume that the defendants are disposed to commit at every opportunity this loyal axe which would be helpful to the Communist countries it is still difficult to reconcile with traditional American law the jailing of persons by the courts who visualize, but as yet there are no crimes committed, and that persons should go to prison to protect society from predicted but unconsummated offenses.

Such a philosophy is unprecedented in this country and is so fraught with danger of excesses and injustices that I am loathe to resort to it.

As the court well knows there is further language and I want to quote only one short paragraph of that further language which deals with the whole question as to whether [fol. 39] or not, assuming that a person is engaged actively in the Communist Party, whether that in and of itself should be grounds to deny the person bail pending further proceedings. The court says this:

> "The right of every American to equal treatment under the law is wrapped up in the same constitutional bundle with those of these Communists. If in anger or disgust with these defendants we throw out the bundle, we also cast aside protection for the liberties of more worthy critics who may be in opposition to the government of some future day."

[fol. 40] And bear in mind, your Honor, that in the Williamson case these 11 defendants had already been convicted of the crime of which they were charged.

In our case we have no conviction and this is an order for deportation. These matters are now pending. We may assume that all of these persons were or may be now members of the Communist Party or even active in the Communist Party, which we don't yet know, but assum-

ing all that I don't see how we can set aside Mr. Justice Jackson's own view.

The Court: The only thing is, Mr. Justice Jackson's view was not the view of the court. That was his personal view the same as it was Mr. Justice Douglas' view in the case of Toyko Rose.

This may be not the first time that I am wrong. I have been reversed by the Circuit Court before.

Mr. Wirin: Not very often.

The Court: And undoubtedly I will be in the future, but I feel that Congress in the amendment to the McCarran Act has recognized a present danger and I am going to rule on the side that I think may have a tendency to protect the security of the United States. I am not going to turn these people loose if they are Communists, any more than I would turn loose a deadly germ in this community. If that is my duty let the Circuit Court say so and assume that burden. If they say I am wrong they will send it back and the United States Attorney can file [fol. 41] an amended return and we will go to trial again on the issues.

I don't know anything about these people. I don't know any one of them. I wouldn't know them if I saw them. But I do say that I am giving them now their day in court and an opportunity to establish that they are not a threat to the security of the United States.

Maybe on some technical ground I should direct the Government to amend its return and continue the case a week for that purpose, but I think it is more important that you gentlemen get this matter before the Circuit Court unless you want to put on some evidence. If you want to put on evidence I am ready to hear it.

Mr. Tyre: The view which your Honor just expressed, by inference at least, is inconsistent with Mr. Jackson Jackson's view which you point out as only one Justice; but I want to point out I think the record will show that Mr. Justice Jackson in cases of this sort has not been with the minority but always on the majority side of the case.

The Court: I have the highest respect for Justice Jackson. He is responsible for my being here today and naturally I have a very high regard and great respect for his viewpoint, but I feel that that was a criminal case

where the lower court, and I believe the Government itself stipulated there was a substantial question involved, and under the law those people were entitled to bail. Our [fol. 42] own Circuit held that under those circumstances, in the Bridges case, there must be a finding by the trial court that there was a substantial question involved and I believe there was nothing else to be done but grant bail.

If this were a criminal case and there was a substantial question involved I wouldn't go into the question of whether or not they were a threat to our national safety. I would agree with them and grant bail.

If these men were charged in other proceedings, charged with committing overt acts, that would be on thing, but we have here aliens who are only here by reason of the generosity of our country. You might say they are guests of our country. We have a right to admit them and we have a right to throw them out. As a matter of fact, under the law that is well established, if Congress had so desired in this very act they could have deprived this court of any jurisdiction. They could have given the Attorney General exclusive jurisdiction and this court wouldn't have had a right to review it.

However, I have ruled with you gentlemen on that point and contrary to the views of the Government, that they didn't give that exclusive right and that the court has jurisdiction.

As a matter of fact, the courts may hold that I have taken up too much time—that I shouldn't have even heard the matter. They may hold the McCarran Act gives the Attorney General exclusive jurisdiction. But the pre- [fol. 43] amble to the McCarran Act, which amended this section, recognizes a present danger and as a trial judge I am not going to interfere with that present danger without some showing. I am not satisfied with just the talk of counsel.

Mr. Tyre: It is a little difficult for counsel——

The Court: I realize it is because I have some very definite views in this matter that have crystallized over a period of time. And you people have also been doing a little playing.

Mr. Tyre: I think my shoes are probably a little larger larger than Mr. Porter's, but I would still like to add a

footnote which I hope in substance will not be a larger foot.

Mr. Justice Jackson in the Williamson case, with reference to the point you just raised——

The Court: Counsel, you have referred to that.

Mr. Tyre: I am not going to repeat myself.

The Court: That is in your record and you can argue that to the Circuit Court. As far as I am concerned, my viewpoint and my duty and my understanding of the law is such that you could argue all day and it wouldn't change my viewpoint one bit. I am putting it right up to you. You may offer evidence that these people are not threats to the national security. If any one of these people want to take the stand I will give them that privilege and I will weigh the evidence and determine whether or not they [fol. 44] are a security risk; and if they offer evidence to show they are not a threat then the burden will shift to the Government to establish that they are. But until that is established I don't believe the Government is to be placed on its proof.

Mr. Tyre: It is obviously no use arguing further with your Honor.

The Court: Has it taken you gentlemen an hour to find that out?

Mr. Tyre: I can't agree with that. I have been before many judges, your Honor, and I am sure when you were on this side of the bench, where the court has indicated one view but has always allowed counsel to argue his case for the purpose of changing that view—what I want to say is that I think your Honor was kind enough at the outset of this hearing to indicate what his views were so we had an opportunity to argue directly to the issue.

The Court: I think perhaps I have studied more cases on this question than the lawyers have because the moment the petitions were filed I went to work on it and have done a lot of work on it. I don't know who filed the first petition but as soon as I got it I started to work on Section 156.

But even with all of that don't misunderstand me, I may be in error as to the law. My interpretation may be erroneous. I am simply making it easy for you to go to

the Circuit Court upstairs and if I am wrong you can get [fol. 45] these petitioners out this afternoon.

Mr. Tyre: I have nothing further to add. I have a lot I would like to say but if it would be useless I am not going to take up the court's time.

The Court: I would save my breath and talk to the Circuit Court.

Miss Rosenberg: I should like to be heard on one point that hasn't yet been raised.

I hope the size of my feet is not determinative of any matter before the court.

I should like to call your attention that your notion of the rights of aliens in this country is perhaps not exactly correct. All aliens do have rights here and they cannot be thrown out of the country at the whim and caprice of anybody, whether an administrative officer or a judicial officer. They are protected by the Constitution.

Speaking of guests, your Honor. Perhaps all of us, your Honor, are guests here. I think we are all guests of the Indians or perhaps the Mexicans. I think there is great dispute as to whether we have a right to be here at all, so that your notion, your Honor, if I may say so most respectfully, with regard to aliens is not that they are here on suffeyance.

The Court: Counsel, what I am trying to say is that [fol. 46] their rights are established by Congress and their rights may be subject to approval by the courts or they may be absolutely an executive problem. That has been recognized in all these cases. As a matter of fact, when we had the original argument here the Government's claim and contention was that they had an absolute right—that they had absolute jurisdiction and I think it was admitted here that if Congress had intended to give exclusive jurisdiction to the Attorney General they could have done so.

Miss Rosenberg: Are you saying by that, your Honor, if Congress had done so that Congress is able then to formulate laws which are a subversion of the Constitution itself? My understanding is, your Honor, that the rights of aliens are protected by the Constitution.

The Court: Chief Justice Taft is pretty good authority.

Miss Rosenberg: Well, the Constitution is the authority

that I rely on, your Honor, and I trust that is the opinion of your Honor also, although you have indicated that despite argument your views are intransigent. I trust not, because there is one point I should like to raise and that is if you abide by the ruling you just suggested that it is the responsibility of the petitioners in this matter now to move forward and to prove by clear and convincing evidence that they are not, as it is alleged, inimical to the interests o fthe United States, you are placing these peti-
[fol. 47] tioners in a position where they should not be placed.

There are presently pending deportation proceedings, your Honor, in which proceedings they are alleged to be members of the Communist Party and in those proceedings the burden of proof is on the Government to prove such allegation.

If the petitioners are here required to make a showing, which you have indicated they must make, you are doing in fact by indirection which cannot be done by direction in the deportation proceedings where the burden of proof is on the Government.

The petitioners there in those proceedings may claim certain privileges, your Honor, of which you are well aware. There are many devices of trial practice and the petitioners in the deportation proceedings may not choose to take the stand at all. There are various methods by which lawyers——

The Court: May I ask in that respect, cannot the immigration officials call them to the witness stand and then they have to answer a question or exercise their privilege?

Miss Rosenberg: They can claim the privilege, your Honor.

The Court: But don't the cases hold in deportation proceedings that a strong inference arises from that?

Miss Rosenberg: Your Honor, no inference may be deduced from the fact that a witness does not take the witness stand.

The Court: If he does not take the stand, but can't he
[fol. 48] be called to the stand and if he refuses to testify an inference may be drawn from that? It is a civil proceeding, you must remember.

Miss Rosenberg: Well, they are really not fully civil

proceedings, your Honor, because of the punishment, although you have said that it cannot be properly termed "punishment," but it is a deprivation of——

The Court: It says technically it is not punishment.

Miss Rosenberg: It is punishment of the greatest sort, so it seems to me on that they would not be obliged to take the witness stand and no inference would be drawn.

My point is that you are requiring, in putting these petitioners in a position by these proceedings which are denying to them their proper rights in a deportation proceeding. And, as Mr. Porter pointed out, the inquisition or the examination, your Honor, of evidence here is not the proper function of the court. It is a usurpation by the court of this investigative function and properly belongs in the deportation proceeding and I contend, your Honor, that this is a denial of due process by forcing upon the petitioners in this matter the burden which they do not have in a deportation proceeding.

There is just another point, your Honor, I would like to observe and that is, your Honor has made on several occasions remarks with regard to the Communist Party [fol. 49] and what the Communist Party stands for.

As far as I know, your Honor, there has been no adjudication on that point. There has been no finding, your Honor, with regard to the Communist Party that it stands for the things which you have indicated.

True there is the McCarran Act, but those are merely conclusions. They are not based on any evidence.

As a matter of fact, since bail was granted in the case of the 11 people there is evidently a substantial question in regard to it and it seems to me, your Honor, if I may, I do not think it appropriate for a court to bring into the courtroom what you yourself have said perhaps is present, a kind of hysteria.

It seems to me that in these trying times, your Honor, you should guard, if I may be permitted to say so, your Honor, with the utmost zeal the defense of those people with regard to whom there is no evidence as to their subversive character. They are merely conclusions and it seems to me that it is not an attitude in which a case of this kind can properly be tried. If the court by not alone innuendo, your Honor, but forthright statements of fact,

can make allegations with regard to which there is no proof then indeed it is hysteria, and so I say for these reasons and for all the other reasons I urgently urge upon your Honor that if you remain not intransigent but you recognize, your Honor, the justice of people, though they [fol. 50] be aliens, they are nevertheless protected by the Constitution.

Mr. Porter: May we have a short recess, your Honor?

The Court: I want to ask Mr. Wirin a question because of his familiarity with these—not this particular type of proceeding, but the general proposition that one finds in deportation proceedings. I have never appeared before a board, before a board in a deportation proceeding, as an attorney so I will have to get my information concerning their proceedings from someone else, but it seems to me that in some of the cases that I have been reading that an alien can be called to the stand and questioned. He can there exercise his right to refuse to answer on the ground that it might tend to incriminate him and he cannot be compelled to testify, but the courts have held that a strong inference arises from the fact that he refuses to testify. Is that the law?

Mr. Wirin: I must confess that I am not as familiar with the immigration procedure as your Honor's question would attribute to me, but I will give your Honor my observation about it.

I think your Honor's observation is correct except for one exception. I think it is true, one, that the immigration service may call the respondent as a witness. I think it is further true that he may not—that he doesn't have to testify if he doesn't want to and that an inference may [fol. 51] be drawn against him because of his failure to testify, but not an inference drawn against him because of his failure to testify because of self-incrimination. In other words, if the refusal—

The Court: Suppose that a man is put on the witness stand and asked directly the question: "Are you a member of the Communist Party," and he refuses to answer on the ground that that answer would tend to incriminate him, would that raise an inference, his refusal to answer?

Mr. Wirin: Judge, my opinion is that if he refused to answer on the ground that it would tend to incriminate

him no inference could be drawn against him. However, if he refused to answer generally then an inference may be drawn against him. That is my view of it.

The Court: I didn't make a notation of the case that I have in mind but I ran across that someplace.

Mr. Binns: 203 U. S., 149. That was a habeas corpus hearing and that is the case in which your Honor remembers the language, that a strong inference is drawn against him for refusing to answer. There is no discrimination made as between failure to answer and on the ground it might incriminate or just failure to answer.

Mr. Wirin: You say in actual fact that case did not involve a claim of privilege because of self-incrimination?

Mr. Binns: I said the case doesn't raise any such thing. [fol. 52] Mr. Wirin: I am conceding and saying that ordinarily a refusal to answer may result in a strong inference drawn against a man, but that doesn't apply when the refusal to answer is by virtue of an assertion of a constitutional right, namely, self-incrimination. That may be the law tomorrow but I don't think it has been adjudicated that the assertion of the right of self-incrimination permits an inference to be drawn against a man.

The Court: There have been a number of cases cited to me that I may or may not have read. You gave me a number of cases, Mr. Porter. Do you mind giving me those cases over again? They were coming at me too fast.

Mr. Porter: On the effect of uncontradicted allegations in the petition I cited these cases: Whitten, 160 U. S., 231. Also the Lawyers Edition citation.

The Court: I will have to have that again.

Mr. Porter: That is Whitten vs. Tomlinson.

The Court: You cited 125 something.

Mr. Porter: That is a little farther down. There are others here. There is another case in the same volume of the United States Reports, Cohl vs. Lehlback, 160 U. S., 293.

Then 110 Fed. (2d), 113.

148 Fed. (2d), 857. Certiorari was denied in this last named case. By the way, in 65 Supreme Court 1580 there is a case I would like the court to read.

[fol. 53] The case in 125 Fed. (2d) is at page 806, Price vs. Johnson. That went to the Supreme Court and is reported there. The same case is in 334 U. S., 266.

Then the Second Circuit case that I discussed is 3 Fed. (2d), 551.

The cases holding that conclusions in a return are insufficient, 176 Fed., 735. Generally 39 Corpus Juris Secundum, 653.

The Court: Are there any other cases that you want to call to my attention?

Mr. Porter: 146 Fed. (2d) 576, and the point for which it seemed to me relevant was a statement by Judge Denman concurring at page 589.

The Court: Now, gentlemen, I unless you desire to submit some evidence the matter will stand submitted.

Mr. Porter: I think that we can probably submit it in just a few minutes, your Honor, if we might have about a 5-minute recess to check our ideas.

The Court: All right, we will take a short recess.

(Short recess.)

The Court: You may proceed.

Mr. Tyre: If your Honor please, during the recess, among other things, I have talked with Mr. Binns concerning the Hyun application. We have on file now in that matter a traverse on the return.

[fol. 54] The usual procedure, we understand, is to incorporate in that traverse virtually the allegations of the petition.

At this time I want to move, pursuant to stipulation, that the traverse be deemed amended to include all of the allegations of the petitioner—all of the allegations of the petition for a writ which was filed in this matter.

Mr. Binns: We would have no objection to so stipulating, your Honor.

The Court: That is satisfactory.

Mr. Fleishman: On behalf of the petitioner Carlisle I would like to make a similar motion. I also would like to incorporate all the allegations in the petition in this matter in my answer.

The Court: What is the effect of that, so I may understand it?

Mr. Binns: The effect of that stipulation, as I see it,

your Honor, is that their traverse, which they have filed, is deemed to include all the allegations of the petition, but under the cases there is no compulsion on the part of the Government to formally deny those. They are deemed denied.

After all, a habeas corpus proceeding is somewhat of an informal proceeding and somewhat of a summary proceeding.

Now, as I stated to counsel during the recess, I don't know for sure whether we have progressed to the point of [fol. 55] filing traverses here. I feel that we are probably still back on an order to show cause as to whether or not the writ shall issue at all.

The Court: So I may understand, when the practice developed in the Federal Courts that an order to show cause is one of the means of replying, it is immaterial whether the court issues the writ. Mr. Wirin probably has had more experience with these matters than anybody else. Isn't that the situation? Hasn't that been the practice that has developed?

Mr. Wirin: Judge, if you are addressing me, it is a practice which has developed—I think it is a practice, if I may say so, which the Supreme Court has frowned upon, and I think it has frowned upon that practice as practiced by the courts of the Ninth Circuit, including the Court of Appeals, our Circuit, which was reversed in a couple of cases on the ground the writ should have been issued where there was a factual showing made in the petition.

The Court: Suppose I were to find that there was a technical question involved and direct the writ to issue returnable next week sometime, without bail, then where are you? The first thing you know the Circuit Court will be gone and you will have to go to San Francisco to take up this matter. That is what I am trying to avoid. I am not trying to make it hard on you people. I simply don't agree with you as to the law. As a matter of fact, I am [fol. 56] trying to make it easy for you to get a review and as inexpensively as possible. That is why I was quarreling with you last week. It seemed to me we were forgetting the practical side of it and wasting time over technicalities.

Mr. Porter: Your Honor, in order that the record may

be completely clear in the matter of Carlson, No. 12491, may I ask, first, if I am correct in my understanding that the motion to strike portions of the return which I filed in this matter, has been denied?

The Court: Yes.

Mr. Porter: Then may I have leave to file what I have designated as an answer rather than a traverse? It amounts to the same thing, I believe, an answer to the return in this matter, a copy of which I have already served by mail on the United States Attorney.

The Court: Yes. May I make this inquiry? When we get through with all our maneuvers and finally end up with what amounts to nothing, unless you are working on a per diem—and I hope you are—I hope you are getting a good per diem; I like to see attorneys get paid for it when they work—is there going to be any evidence offered if I still maintain my ruling? Are any of you going to offer any evidence?

Mr. Porter: I desire to submit the matter of Carlson now, your Honor.

[fol. 57] The Court: If there is any question in these matters that you want to make returns and answers, I may go a little further and direct a writ returnable next week. My time is limited. I don't see why if you have any evidence you want to offer why we can't have it now. It might be it wouldn't be necessary to go any further. You people, so far as I am concerned, can very easily shift the responsibility to the Government.

Mr. Porter: Well, if I may answer that as far as my client is concerned, your Honor, it is my position that the only matter upon which the court has indicated a desire to hear evidence is the matter in issue in the deportation proceeding. All other evidence which is relevant is set forth in the petition. It is uncontradicted and it must therefore be deemed to be true.

The Court: I have assumed the position that there is only one reason that the Government has issued a new warrant and denied bail, and that is on the ground that they, in their opinion, are security risks; that as far as their personal conduct otherwise is concerned, it is not questioned.

I believe I made that statement before and I believe

that is what the Government stated was their position in the other hearing.

But I have understood that that was the only question and I made the statement that if these people were not con- [fol. 58] nected with an organization such as has been classified as subversive, and will take the stand and testify to that effect or offer other evidence to that effect, that then I would feel that the burden would shift to the Government.

Of course we differ substantially as to where the burden lies. You take the position that the Attorney General should assume the burden of justifying his denial of bail. I take the position that when he denied bail he has exercised his discretion and that the burden then shifts to you to show there has been an abuse of discretion, and I don't think you can show it by mere papers. I think the court is entitled to have evidence.

Now, that is where we differ substantially. Some people think that you should come here and simply by talking induce the court to make a finding that the Attorney General has abused his discretion, but it is going to take more than talk to convince me that he has abused his discretion. It is going to require evidence and I am willing to listen to the evidence. The only thing is that next week I am not so certain about my time. I know now that Monday, Tuesday and Wednesday are already taken up. It will be next Thursday, a week from this Thursday, before I could give any more time to these cases outside of today.

On the other hand, I might after reading these cases find that the return was insufficient. The United States [fol. 59] Attorney in reading them might find that he desires to make a more extensive return than he has made. I don't know. You may convince him.

Mr. Porter: Now is the time for him to make that move.

The Court: But you have raised these points all of a sudden. I was rather disappointed that we didn't go ahead with this matter yesterday afternoon because last evening I would have had an opportunity of reading the cases, but you come in and spring something on me when I thought we all understood pretty well what the issues were. I am going to determine whether to issue a writ or simply order a dismissal now.

Mr. Porter: All I can say is that in the light of the argument and discussions with the court this morning I earnestly hope that the court will make a final ruling promptly in the matter.

The Court: I don't know how promptly it will be because you have raised additional technical questions.

Mr. Porter: And we made our position clear to your Honor.

The Court: But there are additional matters this morning comparable to the ones that ended in the blowup last week. This morning you have raised questions as to the sufficiency of the return of the United States Attorney. Now, if that return is insufficient I would afford them the same opportunity I would afford you if your petition was [fol. 60] insufficient. I would afford you an opportunity to amend and I will afford them an opportunity to amend their return if they consider it necessary or if I find that their return is insufficient I will give them an opportunity to amend the same as I would you.

Mr. Porter: I just hope that your Honor will advise the parties of your conclusion on this matter as soon as possible.

The Court: The only thing is, I was hoping we could get this down to a clear understanding that there was one issue involved, and that is whether or not the court should compel the Government to assume the burden justifying the issuance of this new warrant and denying bail, or whether that burden was upon you to show that there was an abuse of discretion. I was hoping we could narrow the issues down to that point and then I would be in a position to rule as I have indicated.

But now there are technical points involved that naturally the court wants to be satisfied with. I was advised yesterday that we would be able to go ahead this morning. I assume the attack on the return is probably new to the Attorney General. I haven't heard from him. He hasn't asked for any additional time. He may be willing to rest the matter on his return. Are you?

Mr. Binns: As far as my understanding of the law is now we are, your Honor.

[fol. 61] The Court: It is not what your understanding of the law is now; do you know?

Mr. Binns: We will rest on the return as it stands now.

The Court: Then I will determine whether or not I think it is sufficient. If I find it is sufficient you will know what my ruling is going to be.

Mr. Wirin: May I address the court for a moment?

The Court: Yes.

Mr. Wirin: In the first place, I am appearing as amicus curiae and I am not determining policy for the petitioners, and I am not addressing the court with respect to the policy of the petitioners, but I want to make an observation on a matter in connection with which your Honor has just said if your Honor should decide, despite the position of the United States Attorney, that his return is not sufficient, then it seems to me that the petitioners would be entitled to not only the issuance of a writ, indeed would be entitled to the issuance of the permanent writ if your Honor should decide it is not sufficient.

The Court: You wouldn't expect me to do that any more than if you were to come in here, Mr. Wirin, with a petition for a writ that might have some defect in it. You know from your experience in this court that I would give you an opportunity to correct it.

Mr. Wirin: Yes.

[fol. 62] The Court: I wouldn't take advantage of you because of some technicality. You have tried enough cases before me to know that I don't do that.

Mr. Wirin: I agree with that. Then I want to make this further observation in the event your Honor permits an amendment to the return even though the United States Attorney has not requested it. I urge upon your Honor that in the exercise of sound discretion that pending the filing of another return or if your Honor should decide, for instance, that the writ should issue rather than an order to show cause under the decisions which have been cited to your Honor, involving reviews or action by the Supreme Court, or the Ninth Circuit, your Honor certainly has jurisdiction, if you have any jurisdiction at all, to review the matter, to grant bail, interstiti-ally to grant bail until the issues can be squared away before the court.

While petitioner's counsel may be at fault, and I don't pass upon that, for the delays, but any delays which may

be forthcoming now would be by virtue of the nature of the return and I urge your Honor they be enlarged on bail until these matters can be disposed of.

After all, no matter the horrendous security risk they may appear to be to the Attorney General if they are enlarged on bail for a few days, until the matter can be heard again by the court, certainly no great harm can be envisaged as coming to the Government or the people of [fol. 63] the United States and it seems to me that that minimum privilege or right these petitioners ought to have and they ought not be penalized for the faults either of their attorney—and I am not saying there is any fault—or for the faults of the United States Attorney in the inadequacy of a return.

Mr. Porter: I would like to add to that just this, your Honor.

I have been advised informally, not yet in writing, but informally by the immigration service that they propose to hold a hearing in the case of my client, Mr. Carlson, on November 20th, less than two weeks from Friday.

That means obviously the necessity of conferring with my client in preparation for that matter.

It is so inconvenient as to be virtually impossible for me to confer with him while he is at Terminal Island and I am in my office in downtown Los Angeles during business hours, which are the hours that the Government permits visitation by counsel there.

It is impossible because of the obstacles interposed by the immigration service to visit my client out there at other hours, such as evenings and Sundays, as I found out last Sunday.

Now, I submit that Mr. Carlson's right to an adequate opportunity to prepare his defense, as well as my corollary [fol. 64] opportunity to advise with him in the preparation of his defense, is simply another reason why, as Mr. Wirin says, either pending further hearing, if the court deems that to be necessary, or pending appeal, that Mr. Carlson should be enlarged upon the bail which has been in effect for the past three years.

The Court: Counsel, if I were to fix bail in this matter, a new bail bond would have to be secured because there is a new warrant of arrest in this case.

Mr. Porter: Very well.

Mr. Wirin: We would agree to that.

Mr. Porter: I referred to that by way of amount rather than specific security.

Mr. Wirin: My suggestion was merely that this enlargement be very temporary, until these matters can be disposed of.

The Court: I am going into this very carefully and if I think the issues are not clearly drawn I am going to direct the issuance of a writ, but I want to tell you frankly it will be without bail.

I will say this, however, that I think the immigration officers owe it to these petitioners to make it possible to consult with their attorneys at reasonable times.

There were complaints made as to the condition last Sunday. We want to hurry these matters up and I don't think it is any credit to the Department, if it is true, the [fol. 65] way matters were handled last Sunday.

Mr. Binns: Your Honor, I made an investigation into that after the conference in chambers and find that they maintain normal business hours down there and during those business hours any attorney can consult with his client. However, the attorneys in this case have never found it opportune to go there during normal business hours, but have always wanted to use abnormal hours. However, the one who was able to get some one in authority was given special permission and arrangements were made for her to go down there on Sunday. However, your Honor, I don't feel that the Government should have to maintain 24-hour service seven days a week in the event an attorney wants to go down there.

The Court: I will say this, Mr. Binns, that if I issue a writ returnable at a future date because of technicalities, unless I can get the assurance that these people can have a full opportunity of conferring with their clients, I am going to grant bail so they will have that opportunity. Now, if you want to keep them in custody you are going to have to vary a little bit your ironclad rules, because I know from experience with the Immigration Department that they have a set of rules that they cannot deviate from or even be human, I know that. I know that from my experience in other cases.

Mr. Binns: In this case counsel have been free at all [fol. 66] times to interview their clients at any time they wanted to but you can't go down and talk to a uniformed guard with no responsibility, and insist that he do things.

Now, unfortunately, last weekend Mr. Landon was moving his home from one place to another and his telephone was cut off and they said he was hiding someplace. After all, he is working for the Government. On the weekends I think he is entitled to move. It was unfortunate that that occurred.

The Court: You have had enough experience right in your own office, as an Assistant United States Attorney, to know how ironclad they are in everything they do. They have a rule to go by and they won't vary one iota. And if visiting hours are from 10:00 to 12:00 and you stay one minute after 12:00 somebody comes along and throws you out. I know that.

I am trying to carry out what I think is the law in this case but at the same time I think arrangements should be made so these attorneys shouldn't have to take a half-day off from their office to go down to Terminal Island in order to spend a half-hour with their client. It wouldn't hurt if they were a little late or after hours.

Mr. Binns: I practiced law in San Pedro for four years and every time I wanted to see somebody in the jail I had to take a day off.

Mr. Porter: In the county jail attorneys get a pass which admits them to the jail at any reasonable hour, ex- [fol. 67] cept mealtime.

I asked Mr. Landon to give me a pass as an attorney to visit the Terminal Island jail but it was refused.

Mr. Landon insisted that I telephone him or his deputy every time I wanted to see my client other than the period from 9:00 to 5:00 on weekdays.

The Court: 9:00 to 5:00 is quite reasonable hours. I don't know why you should complain about that.

Mr. Porter: That is my working day.

The Court: You are working when you go down there, aren't you?

Mr. Porter: But I want the right to visit my client.

The Court: That is what you get paid for.

Mr. Porter: I want the right to see my client on Saturday and Sunday.

The Court: You haven't the right to see him in church.

Mr. Binns: Your Honor, Mr. Landon says that arrangements can be made for putting them in the county jail. The reason they weren't put there is because it is far more desirable at Terminal Island, so far as food, exercise, detention facilities and everything else. It is a farm at Terminal Island. It isn't a prison.

Now, if they want them brought up here to the county jail he will have to make the necessary arrangements.

The Court: Would you like them put up in the county jail? [fol. 68] Mr. Porter: No, your Honor. I want them available to be visited by me at any reasonable hour.

The Court: I think between 9:00 and 5:00 is reasonable.

Mr. Porter: It is not on a weekday, if your Honor please.

The Court: You can't expect them to bring your client up to your office. I don't think you have a right to expect that.

Mr. Porter: I don't expect that but I want the right to visit them in the evening, if necessary, and at reasonable hours on Saturday and Sunday.

The Court: I think 9:00 to 5:00 is reasonable and any other arrangements should be made with Mr. Landon.

They have indicated here a willingness to cooperate. If you want your men over in the county jail where you only have to go that far they will accommodate you to that extent. What more do you want?

Mr. Porter: I want the men free.

The Court: Sure, I know what you want.

Mr. Porter: And I don't think it is a subject for flippance, if your Honor please.

Now, I would like to say one more thing, if I may. I think that in the light of previous comments of your Honor that the most logical basis for disposing of this matter, in order to get an expeditious decision on it, is that your Honor rule in the case of Carlson now on the merits. We will waive the matter of the writ for that purpose. We [fol. 69] submit on the present record and we ask that your Honor rule on the merits at the earliest possible time so that we may take whatever steps may be open to us.

The Court: Well, I am going to rule when I get ready, and after I have had an opportunity to read these cases

you submitted this morning. I may direct the issuance of a writ so that the United States Attorney can make a more complete return. You people have been playing. You talk about flippancy. I think I have taken about as much as is necessary for me to take from counsel. I have had a first-class lecture or two this morning from counsel. I have appreciated it but it hasn't changed my viewpoint. At the same time, if you think you can rush me into a decision until I am ready, why, you just try it. I think I told you once before of my attempt to hurry a judge in making a decision before he was ready and I was nearly thrown out of his courtroom. I have a very vivid recollection of that experience and it is still one of my favorite stories.

You have cited a number of cases to me this morning and I am going to read those cases.

Miss Rosenberg: For the record, I would like the motion made by Mr. Porter in the Carlson case to be deemed my motion on behalf of my client.

The Court: Have you filed one?

[fol. 70] Miss Rosenberg: No, I have not.

The Court: When you file it I will accept it. You have been very technical this morning and very critical of the court so I am going to require you, if you want to make a motion, to file such motion.

Miss Rosenberg: Very good, your Honor.

The Court: How about you gentlemen? Do you want anything else?

Mr. Wirin: Just want the men out on bail.

The Court: As a friend of the court?

Mr. Wirin: Just the men out on bail.

The Court: Is there anything else? Have you anything further to offer?

Mr. Tyre: I am sorry, I was conferring with Mr. Landon briefly about transportation when Mr. Porter's last remarks were made.

The Court: Do you want your client brought up to the county jail?

Mr. Tyre: No, I was trying to make arrangements to have them brought up here.

The Court: I requested the parties be here this morning. I presume they are here.

Mr. Tyre: I think we can work it out.

The Court: I thought they would be here early so counsel would have an opportunity to consult with them.

[fol. 71] Mr. Binns: We brought them up yesterday.

Mr. Tyre: I think that can be worked out.

Mr. Porter: It was a great accommodation.

Mr. Tyre: That wasn't the point I wanted to make. The point I wanted to make was this: I agree with your Honor we might as well get down to the issues quickly and as far as the Hyun case is concerned, I am willing to have this hearing here deemed to be the return on the order to show cause—in other words, rather than have this taken as the original hearing on the application itself, it is as though the writ had been issued and this is now the return date and we have before us the return and the traverse and the petition, so that we don't have to, if your Honor should see fit to issue the writ, come back a week later and I presume be in precisely the same situation.

The Court: There is only one reason why I am taking it under submission. You have contended that the return is insufficient to raise any issue to be heard by this court, and these cases have been cited in support of that contention, and I want to determine whether that is true or not.

I am willing when you get down to the point where you will say that there is an issue as to whether or not the petitioners in this case—whether or not the burden is upon them to show an abuse of discretion, I am willing and ready to rule, but you claim and contend that there is a defect in the return that does not raise any issue upon which [fol. 72] evidence is required. In other words, you have filed a general demurrer or a motion for judgment on the pleadings, you might call it, and I am going to determine that point and if it comes down to that point I will make a ruling. But I am going to tell you as I told you before, that I am going to allow the Government an opportunity to amend their return if I see fit. So when you come right down to it you are wasting your time and the time of these people because if I am wrong you can get them out of jail a whole lot quicker if you will join issues with me.

Mr. Wirin: May I have another word?

The Court: Yes.

Mr. Wirin: Your Honor has said, and I agree entirely, that your Honor is not concerned with technicalities, and that you give counsel ample opportunity to amend pleadings so that the issues can come foursquare before the court, I accept that, but in this situation, your Honor, the lawyers for the respondents—not one of them, but a group of them, the most skillful lawyers in the United States Attorney's office upstairs—have said to your Honor that they are satisfied with their return and they do not ask leave of court to amend.

Now, I would respectfully suggest that that ought to be sufficient to the court.

The Court: I know them well enough but I don't take a [fol. 73] lawyer's word for anything, not even your word or anyone's as far as the law is concerned, because that is my responsibility. That is my responsibility just like they contended here I didn't have any discretion in the matter. That was their original position and I accepted your interpretation of the law.

Mr. Wirin: But they are not asking leave of this court to amend.

The Court: Well, I may give them an opportunity to. That very often happens in a motion to dismiss for failure to state a cause of action.

Mr. Wirin: That might be a reflection on Mr. Landon's counsel.

The Court: I am not afraid about reflection on his counsel. That is not the question. I want to get this case fairly and squarely before the Circuit Court and I don't want it to go off on some technical tangent.

You gentlemen can get a ruling from me this afternoon if you will get together and stipulate as to what the issues are. As I understand it, the issue is whether or not under a petition for a writ of habeas corpus, whether you have to assume the burden of establishing abuse of discretion by the Attorney General. Now, that is the real question involved.

Mr. Wirin: Your Honor has ruled on that.

The Court: But you claim that the papers are not suf- [fol. 74] ficient to raise that issue.

Mr. Porter: That is right.

The Court: So I am going to determine that myself and

you might as well get together and agree upon the issue and let me rule.

Mr. Wirin: But, Judge, the United States Attorney has told you that they are satisfied with their return and there is nothing for us to stipulate about. In other words, should we try to induce them to change their mind when they have announced to the court for the record that their return is adequate.

The Court: I take this position, that neither this court nor any of counsel know it all. That applies to you and it applies to Mr. Binns and it applies to me. And you have cited a number of cases here and he tells me that he doesn't even want to read those cases to determine whether his return is sufficient. When he does that I say he is going off half-cocked.

The matter will stand submitted.

(Whereupon, at 12:10 o'clock p. m., the above-entitled matter was concluded.)

[fol. 75] Reporter's Certificate to foregoing transcript omitted in printing.

[fol. 1] IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

HONORABLE BEN HARRISON, Judge Presiding

No. 12491-BH—Civil

In Re: FRANK CARLSON, also known as SOLOMON SKOLNICK

No. 12492-BH—Civil

In re: MIRIAM CHRISTINE STEVENSON, etc.

No. 12503-BH—Civil

In re: HARRY CARLISLE, also known as HARRY CARLYLE

No. 12505-BH—Civil

In re: DAVID HYUN

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Los Angeles, California

January 5, 1951

[fol. 2] APPEARANCES:

For the Government: Ernest A. Tolin, United States Attorney, Los Angeles 12, California; by Walter S. Binns, Assistant United States Attorney.

For Carlson: Margolis & McTernan, 709 Rives-Strong Building, 112 West Ninth Street, Los Angeles, California; by John W. Porter, Esq.

For Stevenson: Rose S. Rosenberg, 709 Rives-Strong Building, 112 West Ninth Street, Los Angeles, California.

For Carlisle: Stanley Fleishman, Esq., 1614 North Argyle, Los Angeles, California.

For Hyun: Milton S. Tyre, Esq., 902 Quinby Building, 650 South Grand Avenue, Los Angeles, California.

[fol. 3] Los Angeles, California, Friday, January 5, 1951. 10:00 A.M.

The Court: You may proceed.

The Clerk: 12491 In Re: Frank Carlson.

12492, In Re: Miriam Christine Stevenson.

12503, In Re: Harry Carlisle.

12505, In Re: David Hyun. For hearing on return of writ.

The Court: Whose first move is it?

Mr. Porter: The petitioners are ready, your Honor.

Mr. Binns: We haven't received a copy of the traverse, your Honor. We haven't seen any answer to our return.

Mr. Porter: The respondent's returns to the writs issued by the court last week were served upon counsel for the petitioners at about 2:00 o'clock yesterday afternoon, your Honor.

Our time problem was very severe, therefore, and I would like at this time to propose a stipulation to the Government that the petition for the writ be deemed to be a traverse to the return.

Mr. Binns: Your Honor, I always hesitate to reject stipulations but I have the feeling, having argued this matter before in the Circuit Court, that the fact that the Government was obliging and consented to all stipulation of counsel and in some manner confused the Circuit Court of Appeals—if your notice there is comment in the opinion to the effect that it having been stipulated "we feel that certain things flow."

[fol. 4] I realize that counsel has had very little time and probably has not had time to properly pursue our return, but I feel I also should have time to look at the traverse because of that language in there which puts the burden on me of denying allegations in the traverse and I don't know how I can deny something that I haven't seen.

The Court: Section 2248 of Title 28 provides as follows:

> "The allegations of a return to the writ of habeas corpus or of an answer to an order to show cause in a habeas corpus proceeding, if not traversed, shall be accepted as true except to the extent that the judge finds from the evidence that they are not true."

You are in that situation. I appreciate counsel hasn't had time to answer these long returns and affidavits. I am

fully cognizant of that. But apparently it is going to be necessary to make some some traverse to protect yourselves.

Mr. Porter: May I suggest this, your Honor, that we proceed with the hearing and I shall request leave to file a traverse if we should be so advised before the end of the day today, to file and serve it.

In order to reassure Mr. Binns on that point I would say that any traverse which would be filed by me in the Carlson case at least, would do no more than refer to the allegations of the petition and incorporate them by reference.

[fol. 5] The Court: I think we got into trouble before by not proceeding in the regular course and I think so there will be no question this time about the sufficiency of the pleadings, that a traverse should be filed before we proceed.

I hadn't thought of it in that light but I think the traverse should be filed and then the Circuit Court will have to find something else this time to find fault with.

Mr. Porter: May I suggest then, your Honor, that if it is convenient to your Honor's calendar the matter go over until 2:00 o'clock so we may file a traverse this morning.

The Court: Yes, it can go over until 2:00 o'clock this afternoon. I haven't any objection to that, or I will put it over until next week.

Mr. Porter: We are most anxious to proceed today.

The Court: Well, I am perfectly willing to do anything in order to get this matter in shape so the Circuit Court can act if either side here is dissatisfied with this court's ruling.

I might state, in view of this decision which you called to my attention yesterday afternoon and which I read this morning—I haven't had an opportunity to fully analyze it and consequently I am not going to rule on this case today. I am going to give it further study in the light of the decision of the Ninth Circuit in the cases involved. If there is any variance in the Seattle case and this case I would like [fol. 6] to ascertain that.

Counsel also advised me that there was a decision from Judge Bowen and affidavits in that case that they wanted to submit which they expected to have by special delivery. In any event I want the affidavits upon which the Seattle case was decided.

In addition to that you haven't any objection to going ahead except may I ask this, has the Government anything additional to submit other than their return?

Mr. Binns: Yes, your Honor. You mean in the way of authorities?

The Court: No, I mean evidence.

Mr. Binns: We feel when that point comes we will, your Honor. However, we feel that our affidavits are complete for the purpose of this hearing. We take the position, your Honor, that the burden is still on the petitioners.

The Court: May I ask, Mr. Porter, are you going to submit any counter-affidavits to the affidavits and return of the Director?

Mr. Porter: I don't see any occasion to do so, your Honor, with the possible exception of one point which to me is extremely minor and perhaps not even material, although on that I may differ with the Court of Appeals, and that point is raised in the return in one of the concluding paragraphs, paragraph 13 in the Carlson case, alleging delay at the [fol. 7] hearings under the warrant before the immigration service.

With the exception of that allegation, which is also referred to in the Director's affidavit, which lists the dates of certain hearings in the Carlson case and refers to motions for continuances which were made by counsel in that case, all of the matters alleged in the return, looking at that for a moment separately from the affidavit, are matters peculiarly within the Director's knowledge and that is susceptible of traverse by the petitioner.

So far as the affidavit itself is concerned it is my belief that it is wholly insufficient under the rules of the Court of Appeals in the two cases, or the five cases, perhaps I should say, and it is not our intention to file counter-affidavits in response to that for the reason, first, that we think that when it is boiled down there is nothing in the affidavit except a naked assertion that the petitioner is presently an active member of the Communist Party.

We think, secondly, that such a showing is totally insufficient under the law of the case.

The Court: Doesn't the affidavit go further than that? Doesn't it show his activities?

Mr. Porter: I think not, your Honor. The affidavit in the Carlson case—for example, there are some differences among them but this is, I think, typical enough. It states—well, it breaks down into three groups of statements as I [fol. 8] analyze it. First, a group of alleged admissions in

the past of past membership in the Communist Party of the United States and in the Young Communists League.

There is reference to an admission on an unstated date as to membership in the Young Communists League. A 1945 admission as to membership in the Communist Party and a reference to an article in the Daily People's World in 1949, containing a statement that he was a member or that he was a member of the Communist Party, and a reference to an article in the same newspaper in November 1950 containing a similar quotation with reference to past conditions.

That is one group of statements.

Then there is the group of statements with reference to offices or positions held; a statement that the petitioner was editor of the Young Worker at some unstated period in the past; that he was a member of a national executive committee of the Young Communists League at sometime in the past. That he was secretary and president of the Young Communists League in California at sometime in the past.

That in 1946 and part of 1947 he was state secretary of the Communist Party for the State of Wisconsin.

That in 1949 he headed a Marcus (phonetic) institute in Los Angeles, whatever that means. No explanation is given as to that. And then the totally irrelevant assertion that in 1950 he attended a meeting of the Civil Rights Con-
[fol. 9] gress in Los Angeles.

Now, that is all there is in the affidavit, your Honor.

The Court: Do you consider there is any inference to be drawn from the fact that he refused to answer questions concerning his membership in the Communist Party?

Mr. Porter: Categorically not, your Honor, for two main reasons. First, that it is familiar law that no inference may be drawn as to the fact when the privilege against self-incrimination is claimed. That is familiar law as I know it is to your Honor and the reason for it is apparent because to say otherwise is to say that the privilege can be limited, qualified or indeed done away with if inferences are to be drawn.

The Court: But this is a situation where another rule applies. Where information is withheld an inference can be drawn from that, particularly in a civil action. For instance you have better evidence than anybody else and if

you withhold that information an inference may be drawn from that. This is a civil proceeding.

Mr. Porter: I recognize the rule to which your Honor refers and my answer to that is this: The second point I was going to make is that no logical inference which is worth anything as evidence, can be drawn from such a claim or refusal to answer under these circumstances, because who can say upon what the claim was based or upon [fol. 10] what the refusal was based. It might have been based upon present membership. It might have been based upon membership in 1949.

The Court: But suppose the court were to call the petitioner to the stand and ask him the question whether he was presently a member of the Communist Party and he refused to answer, and I assume he would in view of this affidavit, could any inference be drawn from that?

Mr. Porter: I think the court would not be properly entitled to draw any inference from it, your Honor.

The Court: I am interested in that particular point.

You will recall I had another case in which a person refused to answer whether he was a member of the Communist Party in 1936 and the court held that an inference might be drawn from that that he was still a member.

Mr. Porter: I am not familiar with that case, your Honor, but my point is that, even assuming the propriety of drawing inferences, the inference of present membership is not the only logical inference to be drawn, that an equal logical inference is membership at sometime in the past—at any time in the past.

The Court: The specific question was:

> "At the time this warrant of arrest was served upon you were you a member of the Communist Party"

Assume for the sake of argument that he refused to answer and the Director in his affidavit says that he is an [fol. 11] active member of the Communist Party, what kind of finding would a court be compelled to make?

Mr. Porter: It seems to me that in that situation—let us suppose that he did answer the question and his answer was "no", then the subject would have been opened up and the examiner——

The Court: Then there would be a conflict. As far as

this court is concerned there would be a conflict in the evidence, wouldn't there?

Mr. Porter: Yes, but more than that the opening up of that subject would then have possibly led to an examination as to past membership, a situation which could be just as logically inferred from the claim of privilege to the first question as could the inference of present membership.

Again my point is that there is no logical compulsion.

So far as the civil action is concerned, if it were not for the Smith Act he could be compelled to answer the question. In other words in the deportation hearing or this type of hearing that would be a proper question if it would not subject him to possible criminal prosecution.

Mr. Porter: Yes.

The Court: So, so far as these proceedings are concerned, if it were not for the Smith Act, he could be compelled to answer. If it were not for the Smith Act it wouldn't be an offense to be a member of the so-called Communist Party.

[fol. 12] Mr. Porter: The Smith Act and now the McCaran law.

The Court: Well, the McCaran Act supplements the Smith Act.

Mr. Porter: Yes, I think that is the law but I still——

The Court: We are here trying a civil case and the natural reason for denying membership would be to protect themselves from any criminal prosecution of any kind.

Mr. Porter: That is correct, that is correct, but whatever his reasons are—whatever the motivation is doesn't help us at all in determining what logical inference is to be drawn from the refusal to answer and I still find it impossible to see how such a claim or refusal points any more in the direction of the present than it does in the direction of the past.

But, of course, basically, as I think your Honor has probably already cleared, our position is whether the showing of present membership or past membership or any membership, the showing is insufficient under the tests laid down by the court of appeals.

The Court: I take the position that it is only present membership and if there were no present activity there wouldn't be any question in this case and bail would be proper.

The likelihood of these people leaving the jurisdiction of

the court is not the point at issue. Is that not true, Mr. Binns?

[fol. 13] Mr. Binns: That is correct.

The Court: You claim that under the McCaran Act these people present a security risk by being at large.

Mr. Binns: Not specifically under the McCaran Act. We feel under the general immigration laws, of which the McCaran law is only an amendment——

The Court: The McCaran Act extended Section 156. It clarified that section so there is no argument about the right of taking people into custody.

Mr. Binns: That is correct.

The Court: And your new warrant was issued by virtue of the power given to you under the McCaran Act, if I remember correctly.

Mr. Binns: Your Honor, on this question of using a refusal to answer, we have the case that I think your Honor has previously had cited, but whether you have or not I am not certain, Bilokumsky v. Tod, 263 U. S., 149.

They have a discussion there, your Honor, of a deportee standing mute.

Your Honor, if counsel is going to get these papers prepared by 2:00 o'clock, and I know him very well, he will talk until then——

The Court: Well, I thought he was going to talk just so long anyhow and I might as well listen to him now and let him get it out of his system as to listen to it later today [fol. 14] and be tied up with traffic this afternoon. I know he is going to talk just so long.

Mr. Porter: I have been answering your Honor's questions so far.

The Court: I realize that. I mean nothing by such remarks.

Mr. Porter: I just wanted to add this one further comment relative to your Honor's last remark.

You said in effect, as I recall, that if it were just a question of past membership rather than present activity you would feel that they were clearly entitled to bail.

The Court: In other words I would take the position, while it might be grounds for deportation to show that a man, for example, was a member of the Communist Party in 1936, unless there was some evidence to show that that

membership was continued or his activities as a Communist continued, I wouldn't hesitate in granting him bail.

The only question that is bothering me is this, frankly. The President says we are not at war, but American boys are being compelled to go into the army and are being killed by Communists in Korea. Those boys are compelled to enter the service by reason of their citizenship while people who are not citizens and who are members of the Communist Party—alleged to be members of the Communist Party and active in that organization in this country [fol. 15] and within our own ranks and have as their objective the destruction of the things that the boys in Korea are fighting for, and yet the Circuit Court, and I am not speaking disrespectfully of the Circuit Court because I have high respect for the integrity and loyalty of the gentlemen who were involved in this proceeding, yet they don't give me any direct outline upon which I may proceed—that is I haven't been able to fathom the two decisions completely and I don't know just how far and what the Director has to show here. I am not clear. He states in his affidavit that they are present members of the Communist Party. It is my duty to turn these people loose to continue as active members of the Communist Party in our community. That is the thing that is bothering me.

Mr. Porter: Your Honor, the question in our opinion is not whether they are present or past active members of the Communist Party or any other organization, but whether the Director can show that they have done anything which justifies his conclusion that they are security risks.

The Court: It is your claim that it is incumbent on the Government to show some specific act of, you might say, of disloyalty? These people don't owe any loyalty to this country. They don't owe allegiance to this country. They are aliens. They don't owe this country anything.

Mr. Porter: That is a debatable point, particularly with respect to someone like Mr. Carlson, for example, who [fol. 16] has been here since he was the age of 7 years and knows no other home.

The Court: Yes, but he is an alien. He has not taken any oath of allegiance to this country.

Mr. Porter: Why? Because the Government hasn't allowed him to, your Honor. There is an undenied allega-

tion in our petition that he filed a petition for naturalization seeking to become a citizen of this country.

The Court: I realize that.

Mr. Porter: And he has been prevented from doing so only by the action of the immigration and naturalization service.

Now if these people by virtue of present active membership or whatever the Government chooses to call it, have done things, have taken part in activities which would lead a reasonable man to conclude that their liberty would constitute a threat to anybody or anything or any state of order, then the Government can just as well come forward and say so and say what those activities are. But the Government hasn't done it and there is just one reason it hasn't done it and that is because they can't do it. All they can do is point again and again and again and again ad nauseam to the findings of the McCaran law to bolster up their case when those findings don't even support their conclusion and it boils down, if your Honor please, to a question as to whether the individual petitioner—the petitioner, not a class of people whom the Government dis- [fol. 17] approves of for various reasons, but whether the petitioner is a bad security risk, whatever that means. And the Government hasn't advanced a single fact. It hasn't even advanced a conclusion, if your Honor please, except the secondary conclusion that because they are alleged to be present active members of the Communist Party, which is alleged to be a world conspiracy—a world conspiratorial movement, et cetera, et cetera, et cetera, and that these petitioners might at some future time engage in some kind of activity which would be inimical to public security. That is a conclusion upon a conclusion upon a conclusion so again we are in the same boat exactly, if your Honor please, as we were when we were here before.

The Court: Your point is this, as I stated before, it is your interpretation of these decisions that it is essential that the Government set forth some specific act from which the natural inference would flow that they are participating in unlawful activities.

Mr. Porter: That is correct, that is correct, and that position is closely analogous to the position of the Supreme Court in the DeJonge case which involved a quite similar question.

Our position is that this is a question of showing as to individuals and that mere classification, lumping people into categories by way of conclusions, as has been done here, establishes nothing whatever except that the action [fol. 18] of the Director was arbitrary.

The Court: Do you want to take a recess until 2:00 o'clock so you may file your traverse?

Mr. Porter: May I ask this, your Honor, that we have a five or ten minute recess so counsel and I may discuss the problem..

I am not even satisfied, as I say, that any traverse is necessary under the pleadings as they now stand and perhaps we can save that time.

The Court: And I will read this decision while you are talking among yourselves.

Mr. Porter: May we retire, your Honor?

The Court: Yes. We will recess for 10 minutes.

(Short recess)

Mr. Porter: If your Honor please, we would like to have until 2:00 o'clock in order to prepare a traverse so that the record will be completely clear.

Now in order that the Government may know what to expect from it I would like to state that the essence of what it will contain because, as I have said, we are most anxious to proceed with the hearing today for obvious reasons.

In each case it is our thought that the traverse would refer to and incorporate by reference and re-allege all of the allegations of the respective petitions.

In two or three of the cases the traverse may attack the [fol. 19] allegation of undue delay in the deportation hearings on the part of the petitioner or counsel.

The Court: They are here. Call them as witnesses and find out what the facts are.

Mr. Porter: And in one case, the Carlisle case, there are erroneous allegations in the return with reference to prior administrative proceedings which it may be desirable to correct in the traverse.

That is all that there will be in the traverse. None of the other allegations of the return will be controverted and no counter-affidavits are expected to be filed unless it be on this question of delay which I mentioned before.

It may be also that if time and human skill permit we may wish to make motions—file motions to strike portions of the return which we believe to be insufficient as a matter of pleading.

The Court: I might ask if you have the record of these continuances present and someone who can testify to the facts, if that is going to be in dispute, as to the various continuances. The Circuit Court seems to be interested in the delay of hearings in three of these cases.

Mr. Binns: I wanted to ascertain, your Honor, if they happened to be Los Angeles hearing officers and I am informed that they are.

The Court: Very well. The hearings were set for Los [fol. 20] Angeles, were they not?

Mr. Binns: Yes, but sometimes they bring in men from other districts.

The Court: But you have the record?

Mr. Binns: Yes, and they say they are available and they can have them here.

The Court: They are records kept in the regular course of business. They are a part of the Government records in these proceedings and they will be admissible to establish what the facts were if there is any dispute as to the various continuances at the request of counsel, and if it is a local hearing officer he should be present.

Mr. Binns: We will have them here, your Honor.

The Court: All right, we will take the recess until 2:00 o'clock.

I want to say this, I am going to adjourn at 4:00 o'clock and I suggest you arrange your hearing accordingly and your speeches accordingly. I am only going to spend two hours this afternoon on this hearing. We will recess until 2:00 o'clock.

(Whereupon at 11:00 o'clock a.m. a recess was had until 2:00 o'clock p.m. of the same day.)

[fol. 21] Los Angeles, California, January 5, 1951
2:00 P.M.

The Court: Now where are we, gentlemen?

Mr. Binns: We are ready, your Honor.

The Court: Mr. Binns, I am inclined to believe at this time that there is some support to Mr. Porter's position

that there has been no specific facts alleged in the affidavit. There are some in Mr. Carlson's case but in the other three cases there is no allegation that they are presently members of the Communist Party or of any of the other organizations. Nor is there any allegation that they are participating in any present activities that would endanger the public safety.

Mr. Binns: If you will notice, your Honor, in the return——

The Court: I noticed the allegations in the return but I also noticed that they are based upon information.

There is an allegation that the representative of the Attorney General in Washington made certain determinations, but the affidavit that supports the return as to three of these petitioners does not make any statement as to present activities.

In other words, take in the Carlson case, it does mention the fact of some act of his on November 10th of this year, but that is the only one that has any statement of fact as to activities. Take the case of David Hyun. That recites his activities in 1946 and 1947 and says he was educational director of the Westlake Section of the Communist Party [fol. 22] in Los Angeles, California in 1949.

Now, there is nothing in there to show that he was. It doesn't indicate that he is at present nor that he is engaged in any activities.

Mr. Binns: That is correct, your Honor. However, we are in this position, your Honor. They just served me with this traverse and I am concerned about the language in the Circuit Court decision which seemingly puts the burden on the Government of denying everything specifically that we don't want to admit.

Now, I have hurriedly read through these four traverses and I think there is some matter specifically in the Carlson one that we will want to deny, but each of them incorporates by reference the entire petition originally filed and there is definitely matter in those petitions that we want to deny, your Honor, in view of the circumstances.

The Court: Shouldn't they be denied in your return?

Mr. Binns: I don't think they could have been even as late as this morning. Mr. Porter wasn't sure what he was going to put in his traverse and I depended, when we went

to the circuit before, upon the fact by inference we have denied.

The Court: Here is the situation. You had an opportunity to take this case to the Circuit Court and now you are back with a mandate directing me to do certain things. If there is any confusion it is the fault of the Department of Justice, if there is any fault any place. If other words [fol. 23] you have accepted the Circuit Court's ruling and then you come here and want to argue with me about it. You had your remedy. I can't correct the Circuit Court's decision. There is only one place to do that.

The trouble is the Department comes along and throws some people into jail and makes big headlines out of it and when we get all through they will say:

"Oh, well, the court turned them loose."

That is their alibi for it.

Why don't you do what the Circuit Court tells you to do or take it to the Supreme Court and show your good faith. Show that you mean business when you put the people in jail.

Mr. Binns: Your Honor, I feel that the return we filed was filed in good faith and if it wasn't for the language in the Circuit Court's opinion saying that we have to specifically deny everything in the traverse that we don't like, I would be content to rest on the pleadings as they are now, but with that language in there I feel that the Government is entitled to specifically deny everything in these traverses that we don't agree with.

The Court: There is only one affidavit that comes anywhere near, and I am not sure that it comes within the Second Circuit's decision. I am sorry that I haven't been able to have the affidavits which were filed in the Seattle case in which the Circuit Court reversed and remanded. [fol. 24] If I had it I would have an opportunity to compare it.

Do any of you gentlemen have a copy of it or do you know where we can get a copy?

Mr. Porter: I don't have an answer to that, your Honor, short of the clerk's office in the court of appeals.

I do now have a copy of the affidavit filed before Judge Bowen after the remand in Seattle.

The Court: That is not binding upon me, counsel.

The decision in the Seattle case indicates an affidavit which on the face of it is quite similar to the one involved here. If that is true there is nothing more to do about it. That is all. I will have to grant the writ. That is all there is to it.

Of course I presume the Government should have an opportunity to answer this traverse which puts in issue a number of facts. That will have to be heard.

Mr. Porter: Well, I think that is not the case as far as the Carlson case is concerned, your Honor. We demur generally, of course, to the Government's return and we attack in turn certain facts which were also set forth both in the petition and in the return with reference to the calendaring and processing of the administrative hearings commencing in the Carlson case with the original arrest on November 3rd, 1947 and continuing on up through the hearings which have been held in the last few weeks.

[fol. 25] Now, there is no issue of fact tendered here by the traverse in this case and so far as an opportunity for the Government to reply is concerned, the rule of course is in the statute, that the allegations of the traverse which are not contradicted otherwise are deemed denied.

The Court: But they have a right to an opportunity to contradict them.

Mr. Porter: It is automatic and there is no issue of fact tendered by our traverse.

The Court: Well. I presume it is Mrs. Stevenson.

Mr. Porter: Yes.

The Court: Harry Carlisle and David Hyun. There is nothing in the affidavit to show they represent a present danger to the national security.

Mr. Binns: I disagree with the court on that.

The Court: I am going to give you an opportunity to answer the traverse. I shall give you an opportunity to file an affidavit with specific facts upon which the court can act.

Mr. Porter: I would like to record an exception and objection to the court's ruling in this respect, your Honor, upon the ground that the Government has had two chances now. It has had since the 21st day of October 1950, almost three months, in which to come forward, if it could, with some rational factual basis for the action which it has taken against these four people, and I submit there must

[fol. 26] be an end to litigation and that the Government ——

The Court: This court is just as anxious to get through with this as you are.

Mr. Porter: I don't question that, your Honor, and I think that this is the time when it should be brought to an end, if your Honor please.

The Court: The only thing is this, counsel. This morning you wanted until 2:00 o'clock to prepare your traverse. I gave you that opportunity ——

Mr. Porter: We didn't want it, your Honor, if I may recall.

The Court: You asked for a stipulation and counsel wouldn't stipulate.

Mr. Porter: That is right, and that is the customary procedure.

The Court: And you have raised a point this morning that hadn't been specifically called to my attention before, and to which I think considerable weight should be given, and that is whether or not they have to set forth specific facts from which an inference could be drawn that they are security risks.

Now you argued this morning the mere fact that they were Communists or might have been was not sufficient upon which to deny bail.

There is only one affidavit here, and that concerns your [fol. 27] client, which comes anywhere near meeting that requirement. Have the allegations in Mr. Carlson's case been denied?

Mr. Porter: Neither admitted nor denied.

The Court: It stands admitted if it hasn't been denied, doesn't it?

Mr. Porter: That is the position the respondent takes, your Honor.

The Court: Answer that question.

Mr. Porter: As a matter of law ——

The Court: Answer that question. If it isn't denied it is admitted.

Mr. Porter: I can't recall the rule. Let us assume it was admitted. I am perfectly willing to assume as a matter of law it is admitted without reaching the question of these specific facts at all. The point that we make is that this thing doesn't come anywhere near to making a showing

of a reason for holding this man in jail. All it does show, if it shows anything at all, is that on the basis of a bunch of hearsay fortified by a conclusion which your Honor has read, that the petitioner is well known—to whom, by whom, when? As an "educator and leader in the Communist Party".

The Court: I am willing to call Mr. Carlson as the court's witness and question him about these things.

Mr. Porter: That brings me to the situation in a case in Cleveland, your Honor, before Judge Freed where, I am [fol. 28] informed, the court did that. The petitioners declined to take the stand or to answer questions on the basis of the same legal position which we are advancing here and the judge thereupon granted the writ and discharged the prisoners on their bond.

Now this business about the article in the Daily People's World of November 10, 1950 isn't worth the paper it is written on for at least two reasons. One is it is a protected activity. It is the same kind of thing as the Government showed in the Williamson case against the leaflers of the Communist Party and Justice Douglas said that is protected under the First Amendment and, in the second place, all it says is, assuming that this is an accurate quotation:

"I told them I am a Communist"

When did he tell them? Whom did he tell? At what time? At what period? With respect to what period of time?

You can't tell from that and it doesn't begin to establish present membership.

The Court: I don't know whether the Government is going to stand on its affidavit or going to desire to file additional affidavits. I don't know.

There are certain facts that you say you have alleged as true and I stated before I have assumed that the only reason that these people are being detained is because of the allegation of a security risk. In other words, that there is [fol. 29] nothing here to indicate the Government is fearful that they are going to leave the jurisdiction.

Mr. Porter: I understand that is stipulated.

Mr. Binns: It is not stipulated.

Mr. Porter: It is an undenied allegation of the petition and under the opinion of the court of appeals it is admitted.

Mr. Binns: That is why I want time ——

Mr. Porter: It is too late.

The Court: Nothing is too late.

Mr. Porter: Under the mandate of the court as I read it, your Honor ——

The Court: They didn't tell me when I had to have this hearing or when I had to decide it.

Mr. Porter: I refer to the language, if your Honor please, in which the court says there is no denial of petitioner's allegations as to residence, family status and so on and quotes from the Whitten vs. Tomlinson case which I cited to your Honor on the previous hearing which says:

"And these allegations must be taken as true."

Now, the Government has had an opportunity in its return before and its return today to deny what it wanted to deny and to come forward with facts if it could. The Government has failed on each occasion. It has failed in the face of specific guidance from the court of appeals in its opinion in two cases and there is just one reason, your [fol. 30] Honor, and that is because they can't. It is because the facts don't exist.

The Court: If they don't exist then you don't have to worry about it.

Mr. Porter: The Government is asking, your Honor, to hold that a person can be thrown into prison and held there indefinitely pending deportation proceedings because he is a member of the Communist Party and that, we submit is completely outside the law and contrary to everything that we know about our Constitution.

The Court: I am inclined to go along with you but I am not inclined to the extent yet that I am ready to make a ruling because I have a feeling that your position in that respect may be true—that a person may be a Communist but unless they can show some activity I think your position may be correct.

The first time that point impressed me was this morning and that caused me to go back and re-examine the affidavits.

Mr. Porter: Would your Honor do this? I would like to make a suggestion, if I may. If the Government is to have time to file additional affidavits or documents will your Honor not, as a condition of granting this permission, and a reasonable condition, order that pending the filing and any further hearing thereon these petitioners be released

upon their bond with the understanding that they are to [fol. 31] appear at the continued hearing for such disposition as the court may then determine.

The Court: No, I am not going to grant any bail. I am going to hold the matter in status quo.

I feel if these people are security risks that they should not be released until I am satisfied there has been an abuse of discretion. I am not going to release them. I am simply going to follow the mandate of the circuit court. I am not going to grant Government counsel very much time.

There is one point I would like to have some authorities on and that is the question whether or not a refusal to testify may be the basis for an inference to be drawn. One case was cited this morning from the United States Supreme Court. I have never had occasion to run that question down and I would like the benefit of points and authorities from both sides on that question.

I shall not decide this case today in any event. I want to decide it on its merits like I thought I was doing before, but the Circuit Court says I was wrong and when three men say you are wrong I guess you are.

Mr. Porter: May I be heard on the showing made by the Government up to this time, your Honor?

The Court: Do you at this time request an opportunity to file additional affidavits, Mr. Binns?

Mr. Binns: Your Honor, we request at this time a con- [fol. 32] tinuance in order that we can meet head-on the allegations of the traverse and I still submit, your Honor, that once we have prepared a return in accordance with the decision of the Circuit Court the burden is still on the petitioners.

The Court: Well, as I read the Circuit Court's decision, which you people have accepted, that the burden is upon you, to show probable cause why these people shouldn't be released on bail—you have gotten yourself into that position and I think that is what those two decisions mean. In other words, the Seattle decision refers to evidence like in a preliminary hearing. And then another thing is I don't think that the allegation that a person was a Communist in 1947 means he is a security risk in 1950 or 1951.

Mr. Binns: Your Honor, we could hardly prove any activities against these people in 1951. They have been in custody.

The Court: Of course we know they haven't been a security risk for the last three weeks.

In any event I don't think three of the affidavits are sufficient under the circuit court's ruling.

Mr. Binns: In asking you for a continuance I am not conceding that. The trouble is I tried to oblige counsel in the last hearing and I did, to the point which set a world's record in getting to the Circuit Court of Appeals. This time when we go to the Circuit Court of Appeals I don't [fol. 33] want any criticism of the record. I want to be up there on the merits, and not on any statement that the Government should have denied this or that and, your Honor, we just got served with these at 2:00 o'clock and I feel it is only fair and just that we be given time to consider them and amend our return to meet it squarely and I renew our request for a continuance at this time.

Mr. Fleishman: On behalf of the petitioner Carlisle I would like to say a word in amplification of what Mr. Porter and your Honor said, and that is so far as the petitioner Carlisle is concerned there is nothing in the affidavit at all which would in any way show that he was a bad security risk, and there is no reason why he should be—the Government should now be given another opportunity to file additional affidavits, if they can, and I don't think they can because they have done everything they can, but Mr. Binns is in no position now to say he is faced for the first time now with answering the allegations in our petition.

The mandate which was spread on the record 10 days ago told the Government to accept as true those undenied allegations under the original case and then to come forward with anything that they may have, if they have anything. Now, he wasn't surprised today. He couldn't have been surprised today because it was 10 days ago when he was told what was expected of him.

[fol. 34] If there was anything in the original petition that he didn't like he had his opportunity in the 10 days since the mandate was spread on the record to say so.

Now, insofar as the petitioner Carlisle is concerned, the traverse has absolutely nothing new. It re-alleges each and every paragraph of the original petition and the supplement thereto and then paragraph 2 says that deportation proceedings take a longer period of time, which is a matter of judicial notice, and that is all.

Now, on the original hearing, if your Honor recalls, this question was raised whether their return was good and Mr. Binns said "Yes, it is good". He was willing to stand on it. He thought he was right and he went up on that one.

Now, the Circuit Court said "No, you are wrong. Your return is no good. This is what you have got to do. Take the allegations of the petition and if you want to deny them you deny them, otherwise you don't."

Now, he didn't do that. This is nothing new that we are filing. The original was there. The mandate was spread on the record 10 days ago and Mr Binns is complaining that we just served him today. He has had 10 days.

The Court: Counsel, just a moment. I have never tried a case yet where I haven't allowed counsel an opportunity to file either an amendment or additional affidavits. There is nothing new in this procedure so far as this court is [fol. 35] concerned. I don't know that you have ever tried a case before me but if you have and ever asked me for additional time I have never denied you that privilege. That has been my universal practice and I want to get the facts here. If they can't comply with the mandate then you have nothing to worry about.

Mr. Fleishman: The only point in connection —— I appreciate your Honor's position. I think it is eminently fair, but in this case Mr. Carlisle has been in jail now for two and a half months now while we have been litigating this thing. If we don't end it up sometime Mr. Binns can come in next week and the week after that with other reasons for continuances. The general rule is fair but this is not fair that Mr. Binns should be given further opportunity ——

The Court: Counsel, let me ask this question. Suppose I grant the writ and the Government appeals cannot they get an order that these people be held pending that appeal or can they not. I don't know whether they can hold these men or not.

Mr. Fleishman: I would say, your Honor, there would at least be a substantial question that we were right and on that ground I say we are entitled to bail.

The Court: This isn't a criminal case. This is a civil case. I don't know. You people who handle habeas corpus proceedings make a specialty of it. Mr. Del Guercio, while I was United States Attorney, knew something about depor-

tation proceedings. He might answer that question. Sup-
[fol. 36] pose I grant a writ in this case and you file a notice of appeal can you retain the alien in custody?

Mr. Del Guercio: I think it would be a matter in the discretion of the court.

Mr. Porter: My recollection of the rule is, if I may interject, in the event of an appeal by the Government then the matter could be presented either to the trial court or in the event of denial there to the court of appeals.

Where the appeal is by the petitioner that is not the case; but there is a separate paragraph of the rules, as I remember, to that effect with reference to an appeal by the Government.

The Court: I think it is to your advantage, gentlemen, to bring out the facts here. Unless the Government is in position to show some activities that would be detrimental to the security of the country, I am going to discharge or release these petitioners. That will put the burden on them. If they can't do that I will be satisfied that they have had their full day in court and I will grant bail pending appeal. But if you leave the thing up in the air I probably will not because there is a doubt in my mind right now. At most I shall not continue the case beyond Tuesday afternoon.

Mr. Porter: I would just like to add this one point. I think this is what Mr. Fleishman had in mind too. If a showing on a reasonable basis for a continuance were made [fol. 37] of course there would be no question about it, but counsel hasn't made any showing here, your Honor. He has had since the original petitions were filed—specifically since December 16.

The Court: There is no use arguing that with me because it is within my discretion and I would like, when I decide this case the next time, to get it in such shape that the Circuit Court's opinion will be final, because one or the other is going to appeal and if it isn't in better shape than it is now the Government is going to have to appeal.

Mr. Porter: I don't know.

The Court: I don't know that the Government will appeal but if anybody appeals I want this record complete. Right now I don't think sufficient showing has been made but if they can make one I am going to give them that opportunity just the same as if you came in here and some

witnesses were absent this afternoon and you said that witness could prove certain things I would continue the matter until next week to hear that witness.

Mr. Porter: I appreciate that but in the ordinary case we don't have a continuance at the price of people spending four additional days behind bars.

The Court: Inasmuch as they spent Christmas in jail this is going to be a small matter.

Mr. Porter: That is a high price to pay. Now I submit, [fol. 38] your Honor, without prejudice to your ultimate ruling here, and recognizing the equities which we have already mentioned, your Honor can and should as a matter of judicial discretion of the continuance upon the temporary release of these petitioners with an order that they return on Tuesday or whenever your Honor directs, for ultimate disposition of the matter.

The Court: Counsel, I take this position. I am following the mandate of the Circuit Court because I have to. It is my obligation and my duty, but I am not going to release men and women that the Attorney General's office says are security risks.

Mr. Porter: Even though they haven't a thing but a conclusion to support it?

The Court: The executive department of the Government claims they are security risks and that they threaten the security of the home front while we have boys over there dying on the battlefields.

Mr. Porter: But your Honor says the facts so far submitted do not convince you.

The Court: I don't say that. I say they don't comply with the Circuit Court's ruling. That is all I am saying.

Mr. Porter: The Circuit Court says they should submit facts that would convince reasonable men.

The Court: You may hire a hall if you want to argue [fol. 39] further. You are just wasting your time. You have known me long enough to know you are wasting time when you argue facts with me.

I am going to hear this case on its full merits and if there is a dispute as to the question of fact I expect the parties to have their witnesses here.

Mr. Porter: Would your Honor do this for me? Would your Honor ask counsel what allegations of the traverse in the Carlson or any other case he thinks require a rejoinder or an answer.

Mr. Binns: I had the Carlisle papers here a moment ago.

Mr. Porter: In the Carlson case, your Honor, you may recall the first paragraph of the traverse is a general demurrer and the second paragraph is in the nature of a special demurrer addressed to paragraph 13 of the return.

Paragraph 3 incorporates by reference the allegations of the petition and the fourth paragraph re-alleges facts set forth in the return and in the petition with reference to the prior administrative proceedings.

The other paragraph is kind of a motion to dismiss or to strike the return.

Now I submit that there is nothing for the Government to meet factually with reference to this traverse.

The Court: I am not so concerned with the traverse. I simply want to know I am right if I discharge any of these [fol. 40] petitioners. I want to be certain that the Government has no evidence as to their being a present danger. That is the only thing I am concerned with.

Mrs. Rosenberg: May I be heard, your Honor?

The Court: I will listen to you if you don't talk too long, but I am going to grant counsel time to file amended affidavits or additional affidavits and any additional other papers they want to.

I am going to continue this case until 2:00 o'clock Tuesday afternoon and I will have all week to hear it.

Mrs. Rosenberg: I just wanted to say —— I would like to call to your Honor's attention the point you just made that you are so much interested in the request of the Government for an opportunity to examine the traverse and answer but that you are more interested in evidence.

Now as to that point I don't know that any additional time would serve any purpose which could not have been done in the intervening period. They had time, adequate time to raise all the evidence that would be required—that is as to the facts.

Now you, yourself, pointed out, your Honor, that at least in three of the cases there were no facts upon which there could be a decision keeping these people in custody, but as to the question of membership it was past membership and that there was no present activity of any kind at all.

[fol. 41] The Court: There is one point of law I am interested in and that is whether or not the denial of membership

in the Communist Party creates any inference in a case of this kind.

I have only had one case submitted to me by Government counsel and I am now asking both sides to submit additional authorities by Monday noon.

Mrs. Rosenberg: But as to that point, your Honor ——

The Court: If there is an inference to be drawn I am going to call all these parties to the witness stand. I shall call them as my witnesses to determine if they are presently members of the Communist Party.

Mrs. Rosenberg: Assuming, your Honor, that there were a statement that or, facts to show that they were present members of the Communist Party?

The Court: If there is an inference to be drawn ——

Mrs. Rosenberg: And suppose the inference were drawn as you indicate in favor of the fact that they are, that in itself is not the kind of act to which the Circuit Court referred. It must be a fact relating to present activities which makes the individual petitioner a threat to the security of the country and not mere membership. Membership per se does not constitute that threat.

The Court: You want to remember we have two decisions which we are trying to follow.

Mrs. Rosenberg: Well, read together, your Honor, it is [fol. 42] clear, as your Honor indicated, that it must be that kind of fact—not the fact of membership.

The Court: I am asking for that and I am going to give the Government an opportunity to introduce an answer.

Mrs. Rosenberg: May I urge, if the court please, just this one point that was recited in the Circuit Court's opinion, that whether there is a factual reason back of the action must be shown. This is the crucial sentence it seems to me, be shown in the proceeding or evidence produced here.

The Government has had ample time so to do but still keeps locked within its chest the knowledge of what that information is or what the facts are and the court characterizes that action in this way:

> "The imagination can hardly create a situation more incompatible with the spirit of our institutions than that one civil official's completely secret viewpoint could be the basis of sustained imprisonment."

And the Government has done nothing more in the recent return than it did before. It has kept locked within its chest whatever facts it has. It is our contention they do not open that chest because there is nothing there.

The Court: Just a moment. If you want to keep on arguing I will deny the petition and let you take it up on appeal. I am simply trying to find out whether they can comply with the mandate. As I told you, I have no intention [fol. 43] of deciding this case from the bench. I shall not make a decision today. I advised you this morning I was going to take the matter under submission. You are not accomplishing anything now. I simply hope that when we resume next Tuesday afternoon we can complete this matter. I have the balance of the week to give to it if necessary and if they file the papers with me by Monday noon I will be familiar with those papers and will be able to decide it then.

The only point of law that I am interested in is this question of inference—what effect in a case of this type does a refusal to answer a question have. You probably made a note of the one case that counsel referred to this morning.

The matter will be continued until Tuesday afternoon at 2:00 o'clock and at that time if there are any additional affidavits or papers to be filed they must be filed by Monday noon and served on counsel.

Mr. Binns: Your Honor, can you give us to the end of the day on Monday because I have an appearance before Judge Westover Monday morning?

Mr. Porter: That doesn't give us very much time, your Honor.

Mr. Binns: Your Honor, they have no further pleadings but if they want time I have never denied it to them to date. This is the first time I have asked for a continuance.

The Court: Are you the only one upstairs who can work [fol. 44] on this case?

Mr. Binns: I am not the only one upstairs, your Honor, but I am the only one working on this case.

The Court: It looks to me like you need some help.

Mr. Binns: There is a stenographic problem, your Honor. We have four separate cases here and it takes just so much time.

The Court: When I was up there we had only 16 or 18 people and now have 30 or 40.

Mr. Binns: Yes, and we have a lot more work up there, your Honor. The courts keep us busy now.

The Court: The other side got out a lot of work this noon from about 11:00 o'clock to 2:00 o'clock.

Mr. Porter: Yes, and we had to hustle.

The Court: I will give you each until 5:00 o'clock Monday afternoon and expect you to serve counsel by that time.

Mr. Porter: That is the additional affidavits as well as the points and authorities?

The Court: Yes.

Mr. Binns: Yes.

(Whereupon at 3:00 o'clock p.m. the above entitled matter was concluded.)

Reporter's Certificate to foregoing transcript omitted in printing.

[fol. 1] IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

HONORABLE BEN HARRISON, Judge Presiding

No. 12491-BH Civil

In Re: FRANK CARLSON, also known as SOLOMON SKOLNICK

No. 12492-BH Civil

In Re: MIRIAM CHRISTINE STEVENSON, etc.

No. 12503-BH Civil

In Re: HARRY CARLISLE, also known as HARRY CARLYLE

No. 12505-BH Civil

In Re: DAVID HYUN

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Los Angeles, California

January 9, 1951

[fol. 1] APPEARANCES:

For the Government: Ernest A. Tolin, United States Attorney, Los Angeles 12, California; by Walter S. Binns, Assistant United States Attorney.

For Carlson: Margolis & McTernan, 709 Rives-Strong Building, 112 West Ninth Street, Los Angeles, California; by John W. Porter, Esq.

For Stevenson: Rose S. Rosenberg, 709 Rives-Strong Building, 112 West Ninth Street, Los Angeles, California.

For Carlisle: Stanley Fleischman, Esq., 1614 North Argyle, Los Angeles, California.

For Hyun: Milton S. Tyre, Esq., 902 Quinby Building, 650 South Grand Avenue, Los Angeles, California.

[fol. 2] Los Angeles, California, January 9, 1951, 10:00 A. M.

The Court: You may proceed.

The Clerk: 12,491 In Re Frank Carlson.
12,492 In Re Miriam Christine Stevenson.
12,503 In Re Harry Carlisle.
12,505 In Re David Hyun.

The Court: Are counsel ready in these four cases?

Mr. Porter: Petitioners are ready, your Honor.

Mrs. Rosenberg: Yes, your Honor.

Mr. Binns: The Government is ready.

The Court: Counsel, I think the court should correct an impression it conveyed at our last session. I have studied the Landon Petition over the week-end. At a prior session I agreed in part with counsel's position on the meaning of the opinion in that case, but since studying it further I have come to a contrary conclusion.

The other day I felt that the Circuit Court was directing the Government to establish its case by probable cause, but since re-reading and studying this opinion I have concluded that is not what the court meant.

What the court really intended and meant was that it was incumbent upon the Attorney General to show that there was a basis for the exercise of discretion and that then the burden shifted to the petitioners to establish that there [fol. 3] had been an abuse of that discretion.

You will notice on page 3 of the decision it says:

> "And we add, the very fact that the Attorney General (or his assistants) has the power to grant bail before a deportation hearing or refuse it, carries with it the necessity of exercising discretion and certainly discretion must be based upon some phase of fact."

Then turning to page 8 it says:

> "Habeas corpus, as we know, is civil in nature and the petitioner bears the burden of proving that his retention is illegal upon regular process being shown for the detention."

And then turning the next page it says:

"It would seem, therefore, that the return is insufficient when laid beside petitioner's undenied allegations for the reason that petitioner has gone about as far as he could go to prove his claim that his release will not prejudice the United States. If there is good reason for the action of the Director in denying bail it is locked in the Director's own chest of knowledge and is unrevealed for proof against it. Surely, in this circumstance, petitioner is not burdened by the impossible task of imagining and refuting causes which may have had a bearing upon the Director's discretion. Unless it is true that he is a bad risk, and the trial [fol. 4] court could not judicially conclude that he was merely upon the Director's say-so."

Then it states further on the same page:

"But the Director is wrong in assuming that a petitioner is arguing to a point inconsistent with the principle that a petitioner in habeas corpus has the burden of showing that his detention is legally wrongful. In this phase of the case petitioner is not here questioning the sufficiency of the warrant or the return thereon as to its authenticity. He is not questioning the due process leading to the issuance of a warrant to a prison warden upon conviction and sentence after a court trial of facts, as is the case in a habeas corpus proceeding related to a criminal case. He is contesting the legality of his detention upon the ex parte finding of the Director and of the Director's order thereon which is a part of the Director's return."

And reading on:

"If the Director is given the power to use his discretion but that such discretion must not be abused, and the trial court so held and we agree, then the Director's return, to be good, must state some fact upon which a reasonable person could logically con- [fol. 5] clude that the denial of bail is required to protect the country or to secure the alleged alien's presence for deportation should an order to that effect be the result of the hearing. Without this much, the

return is insufficient unless it is supplemented by affidavits or with evidence at the habeas corpus hearing, and this has not been done. In this situation the burden of the petitioner is not shifted to the Director and the Director is not required to 'show his hand'. All he must do is to assert fact, not conclusion, as to the basis for his action. The truth of the Director's reasons for denying bail if at all reasonable is not triable by the district court in habeas corpus any more than the truth of allegations in a criminal charge is decided by a magistrate in a preliminary hearing. But whether there is factual reason back of the action must be shown in either proceeding."

Then the court's directions to me:

"The judgment is reversed and the cause is remanded with direction to the district court to take the undenied material allegations of petitioner's answer as true and to give the Director an opportunity to reveal reasons for exercising his discretion, if he did exercise discretion in denying bail, and to take note [fol. 6] of facts relating to delays in the deportation hearings, and decide the issue upon such evidence and any other proper evidence which may be offered and received, all in conformity with this opinion."

As I view it there are two approaches to this question.

The first is that this is to be considered as comparable to a preliminary hearing. A preliminary hearing requires that two things be established: First, in a criminal case, that a crime has been committed and, secondly, that the defendant has probably committed that crime.

In this case there is no dispute but what the applicants are aliens.

Then the second question is are they the class of aliens who are referred to in the Internal Security Act of 1950.

That brings us down to the question that Mr. Porter raised the other day to the effect that that fact alone, the fact that they were communists, that the applicants were communists in and of itself is not sufficient and that the director would have to show some overt act on their part as communists to justify their retention.

I now take the view, in view of the findings of Congress in the Security Act, that if a person is an active member of the Communist Party, active in its program, that that shows sufficient ground upon which an alien may be retained in [fol. 7] custody.

The affidavits which have been filed in this case with the return in my opinion present facts upon which a reasonable person could logically conclude the denial of bail is required to protect the country.

Therefore I feel the affidavits are sufficient in that respect and that the burden of proof now shifts to the petitioners to establish that there has been an abuse of discretion on the part of the Director.

Mr. Porter: May I address myself to that matter, your Honor?

The Court: Certainly.

Mr. Porter: Our position is ——

The Court: When you say "our position" are you talking for all of counsel or just for your client? We have treated these cases as a unit in a sense, however the return on each one of them is somewhat different. Now, I want to know whether you are talking for your client or for all of the petitioners? In other words, I want to know if I am going to have to listen to all attorneys cover the same subject matter.

Mr. Porter: I think in any case that will not be necessary, your Honor. I think for simplicity it is preferable that I speak as counsel for petitioner in the Carlson case only and that to the extent that my comments adequately express [fol. 8] the position of the other petitioners and if I do not they can so indicate and so when I, in order to avoid the personal pronoun say "our position" I mean to be understood as speaking for the petitioner in the Carlson case and as counsel for him in that case.

Our position on this question has already been stated to the court as a conclusion and the court has adverted to it in the remarks which your Honor just made, namely, that assuming a showing of present membership in the Communist Party, such a showing as a matter of law falls short of establishing a reasonable basis for confining the petitioner without bail pending determination of his deportability.

I would like to develop briefly and succinctly our reasons and the authorities upon which we rely for that position.

Before I do so I should like to comment also, briefly, on the position taken by the Government here, particularly as illustrated by the supplemental return and amended affidavit filed in the Carlson case yesterday.

I would like to call to the court's attention first of all, the fact that in the supplemental return of the respondent Landon in this case, pleading to the petition which was incorporated by reference in the traverse, the respondent states that he has no information and belief as to paragraphs 8, 9 and 10 of the petition.

[fol. 9] Reference to those paragraphs reveal that they are the principal paragraphs which allege what we have called the personal circumstances of the petition. Specifically in this case, paragraph 8 alleges his date and place of birth and date of entry into the United States, his residence in the United States continuously since his entry in 1913.

The fact that he filed a petition for naturalization, the processing of which was interrupted only by the deportation proceedings against him; the length of his residence in California and in Los Angeles; the fact of his marriage to a citizen and his parentage of two children, both born in the State of California.

I mention this only because it seems to me, if your Honor please, that this is somehow symptomatic or symbolic, if you will, of the Government's position and attitude throughout in this case.

Here we are told on one hand that the Government has reasonable ground to believe that this petitioner, if enlarged would engage in activities inimical to the public safety and on the other hand we are told by the same official, the District Director that he has no information and belief sufficient to enable him to plead with respect to the facts of the petitioner's birthplace, date of birth, entry into the United States and the other facts which I just listed, all of which, obviously, would be and I think the court can [fol. 10] take judicial notice of this, would be contained in his naturalization file as well as in the departmental records in connection with its deportation proceedings against him.

Then having denied that it has any information sufficient to form a belief as to the petitioner's personal circum-

stances, the supplemental return goes on to allege that petitioner has not been a law abiding resident of the State of California and City of Los Angeles, and to allege that he has been a member of the Communist Party during his residence in the State of California and the City of Los Angeles.

What this all boils down to, I submit, your Honor, is that the Government here right from the very start has taken the —— has acted upon the view that the mere fact of present membership in the Communist Party is ground for denial of bail in these cases but it has been unwilling to come right out and say so, and so we have been involved in this litigation going on now for some three months, and only now, with the aid of the court, is this underlying issue finally brought out in anything like a clear and unambiguous form.

This is, if your Honor please, both the supplemental return and the affidavits of the respondent are full of conclusions, of ambiguities, of phrases such as "has been" with respect to membership, from which it is impossible for the reader to tell whether they mean to state that they are present active members or something else. But I am not [fol. 11] interested in those quibbles at this point, your Honor.

I say to your Honor that the respondent here, from the very start, has done his utmost to place in the mind of this court the impression that the petitioner Carlson is a man who has somehow been guilty of unlawful conduct or of acts which are inimical to the safety and order of the United States; that the language—the calculatedly loose and conclusionary language which we have faced since the original return here has had the effect, if not the purpose, only of concealing the real position here and that the Government is guilty of bad faith in attempting to impose upon this court.

The Court: Now, counsel, just a moment. There is no use talking about "bad faith" one way or the other. I think you will have to admit that the Government cooperated with you in order to get an early decision from the circuit court in this matter, to get a ruling. That ruling has helped to clarify the atmosphere but still there is something that is undecided.

The court only decided the one point and I have assumed in this case that these people would appear at any future hearing if they were admitted to bail.

Mr. Porter: The Government hasn't denied that, your Honor. Mr. Binns for some reason isn't willing to stipulate but an analysis of the pleadings show that that is one of the undenied allegations of the petition which must be taken [fol. 12] as true.

The Court: But the court must bear in mind and I am frank to say that I have been receiving an education in these matters as we go along. I have learned something. Maybe I haven't yet learned what it is all about, but the Internal Security Act of 1950 in its findings stating the necessity for legislation specifically designates those who are members of the Communist Party as agents of a foreign government that has as its objective the overthrow of this government by force and violence and I must accept those findings.

Mr. Porter: Passing the effect of the findings upon this court, let me address myself then if I may, to an analysis of the findings to determine whether your Honor's characterization of them is actually borne out by the language that Congress has used, because I think if we look at Section 2 of the Internal Security Act closely, your Honor, we will see that the Congress has not made any findings whatever with respect to the responsibility of an individual member of the Communist Party of the United States for any kind of activity or for any of the horrendous things and purposes which the findings attribute to what they variously call the communist movement, world movement and so on.

The Court: What do you say about Section 9 which reads as follows:

> "In the United States those individuals who know-
> [fol. 13] ingly and willfully participate in the world Communist movement, when they so participate, in effect repudiate their allegiance to the United States, and in effect transfer their allegiance to the foreign country in which is vested the direction and control of the world Communist movement."

Mr. Porter: I say two things, your Honor, to that, at least. First, that that paragraph talks about individuals who "knowingly and willfully participate in the world

Communist movement" whatever that means. That paragraph is not talking in so many words about individuals who are members of the Communist Party of the United States. And as a matter of fact the Communist Party or movement in the United States isn't even mentioned until we get over to the final paragraph, subsection 15, which is a very interesting and very significant paragraph if your Honor will look at it with me for a moment.

What does that say? Paragraph 15 of Section 2 says:

> "The Communist movement in the United States is an organization numbering thousands of adherents, rigidly and ruthlessly disciplined."

Then the next sentence:

> "Awaiting and seeking to advance a moment when the United States may be so far extended by foreign engagements, so far divided in counsel, or so far in industrial or financial straits, that overthrow of the government of the United States by force and violence [fol. 14] may seem possible of achievement",

and these are the operative words of the paragraph:

> "It seeks converts far and wide by an extensive system of schooling and indoctrination".

And what is that talking about? About nothing, nothing, I submit to your Honor, but activities protected and secured by the First Amendment. It is talking about speech. It is talking about education. It is talking about publications.

The Court: But read on further:

> "Such preparation by Communist organizations in other countries have aided in supplanting existing governments. The Communist organization in the United States, pursuing its stated objectives, the recent successes of Communist methods in other countries, and the nature and control of the world Communist movement itself, present a clear and present danger to the security of the United States and to the existence of free American institutions, and make it necessary that Congress, in order to provide for the common defense, to preserve the sovereignty of the United States as

an independent nation, and to guarantee to each State a republican form of government, enact appropriate legislation recognizing the existence of such world-wide conspiracy and designed to prevent it from accomplishing its purpose in the United States."

[fol. 15] Mr. Porter: Yes, and what is that if your Honor please? Only the broadest kind of conclusions as to the necessity for general legislation and it doesn't come close, I submit, your Honor, to any kind of a finding as to the obligations, the activities, the commitments or responsibilities or whatever you choose to call it, who is an individual in fact or who is alleged to be a member, an active member of the Communist Party of the United States.

Now, I want to make something completely clear here, your Honor, before I go any further. I want to say that I think these findings are nothing but conclusions; that they have no support in anything which the courts regard as credible evidence and that if we were to look behind them we would recognize and recall that these are compounded upon hearsay and gossip submitted to the House Committee on Un-American Activities for a period of years and swallowed whole by the Congress during a period of unfortunate hysteria.

But what we are concerned with at this juncture is what can we logically and reasonably conclude with respect that Frank Carlson, who is sitting in a grey suit on the front bench of this courtroom if he were at large on bail tomorrow would do something which could ——

The Court: Counsel, you want to remember that one drop of water may not cause a flood but enough drops of water may cause a flood.

[fol. 16] Mr. Porter: That is the point I want to come to in just a minute, if your Honor please.

Now I say if your Honor please, and I submit that our authorities and our American traditions bear me out to the hilt that responsibility for one's acts or even if we reach that stage, for one's beliefs under our Constitution is an individual matter and that the most conclusive proof of an association is not a substitute and is not sufficient to establish individual responsibility as our law requires.

I want to recall in this connection just a couple of cases

which I know your Honor is familiar with, but which I think ——

The Court: Assume that I am anyhow.

Mr. Porter: Which I think it is good to recall in this case. One of them is ——

The Court: Just a moment, Mr. Porter. We will take a short recess.

(Short recess)

The Court: You may proceed.

Mr. Porter: I was about to comment briefly on the application here of the Sneiderman (phonetic) case, your Honor. In that case the court will recall there was involved both the question as to the character or program of the Communist Party in the United States at the time involved there, and also the relationship between the individual [fol. 17] appellant, Sneiderman, and the Communist Party.

The court made this comment which is, I think, so apt for the case at bar, the Carlson case. The court said:

> "Appellant's conduct",

and this is a quotation.

> "has been law-abiding in all respects. According to the record he has never been arrested or connected with any disorder and not a single written or spoken statement of his advocating violent overthrow of the government or indeed even a statement that he desired any change in the Constitution has been produced."

And that failure of proof with respect to individual belief, if you will in that case, let alone activity which is the test before us here, was one of the bases of the court's conclusion in the Sneiderman case.

I wanted also to refer to the DeJonge versus Oregon case in which as you will recall, the appellant was convicted for the crime of conducting a public assemblage in violation of an Oregon criminal syndicalism statute, and here too a couple of brief quotations from the court's opinion I think are illuminating.

First the court said:

> "If the persons assembling"

at the meetings such as the state complained of in that case,

[fol. 18] "If the persons assembling have committed crimes elsewhere, if they have formed or are engaged in a conspiracy against the public peace and order, they may be prosecuted for their conspiracy or other violation of valid laws. But it is a different matter when the State, instead of prosecuting them for such offenses, seizes upon mere participation in a peaceable assembly and a lawful public discussion as the basis for a criminal charge."

And here we could paraphrase that statement with equal authority in law, I submit, to read that it is a different matter when the government instead of prosecuting Mr. Carlson for the activities which it claims against him or predicts from him, seizes upon mere participation in a peaceful organization and a lawful organization as the basis for his detention indefinitely without bail.

Subsequently in the opinion the court made another comment which I think is apt. The evidence there, as the court remarked, failed to show this: The appellant DeJonge had engaged in any activities other than participation in the meeting in question.

Just as here the evidence, if we can call it that, fails to show anything except the conclusion that Mr. Carlson was or is a member of the Communist Party. Then the court says:

"Notwithstanding those objectives",

[fol. 19] that is of the Communist Party,

"the defendant still enjoys his personal right of free speech and to take part in a peaceable assembly having a lawful purpose although called by that party. That was of the essence of his guaranteed personal liberty."

In other words, if Your Honor please, the mere membership of Mr. Carlson or of anybody else in the Communist Party under the laws and Constitution of the United States as we find them today, is not by any stretch a sufficient basis for depriving him of his liberty and thereby taking from him the other rights to which all persons, native or foreign born, under our Constitution are entitled by virtue of the First Amendment.

Now, I want to refer your Honor to another provision of the McCaran law and which I think is particularly significant in this case and that is Section 4, and particularly to Sections 4(a) and 4(f).

As your Honor will see in Section 4(a) it makes it a crime for any person knowingly to "combine, conspire, or agree with any other person to perform any act which would substantially contribute to the establishment within the United States of a totalitarian dictatorship * * * the direction and control of which is to be vested in, or exercised by or under the domination or control of, any foreign government, foreign organization, or foreign individual."
[fol. 20] And the language there clearly harks back to many of the findings of Section 2 so that one might conclude readily that under the findings any member of the Communist Party of the United States would be contended by the Government to be a party to such a conspiracy as is outlined in Section 4(a).

But now look if you please, at Section 4(f). There it is stated by Congress:

> "Neither the holding of office nor membership in any communist organization by any person shall constitute per se a violation of subsection (a) or subsection (c) of this section or of any other criminal statute."

In other words the Congress itself refused to make the finding or to draw the conclusion or the presumption that your Honor does with respect to membership in the Communist Party in and of itself. And this is interesting I think, in connection with a remark by Mr. Justice Jackson in his concurring opinion in the Douds case.

Without reviewing that case at any length I merely want to recall this quotation from that concurring opinion.

The Court: I remember the case. I read it today.

Mr. Porter: And as you will recall then Mr. Justice Jackson lists a number of points which he says Congress might have found and among them he says:

> [fol. 21] "Congress could, on familiar conspiracy principles, charge each member with responsibility for the goals and means of the party."

That is page 626 of 94 Lawyers Edition.

The Court: I have it.

Mr. Porter: But that precisely is what the Congress refused to do in Section 4(f) which I just read to your Honor.

The Court: And Mr. Justice Jackson said further:

> "Every member of the Communist Party is an agent to execute the Communist program".

Mr. Porter: He says Congress could have found that as I recall.

The Court: That isn't the way I read it. It may be.

Mr. Porter: I think all of those statements are appended from the initial premise that Congress could have made such findings but what we have to consider is what Congress did find and what the legislation does provide and so we know from a reading of Section 4(f) that Congress expressly refused to make that finding.

Now, the logic of the Government's position and of the position which your Honor has enunciated here, obviously indicates that every alien member of the Communist Party is per se a threat to the security of the United States and therefore under such logic belongs only behind bars.

The Court: That is not a correct statement, counsel.

[fol. 22] Mr. Porter: Well, that is the way my mind runs from the premise which you have indicated.

The Court: All I am saying is that when there is affirmative evidence that they are members of the Communist Party and they are aliens and active in that organization, the burden then shifts to them to show they are not a threat to national security.

Mr. Porter: That recalls to my mind, your Honor, one of the undenied allegations of our petition which I think I can find readily. I don't want to take more than my share of the time here, but I recall in our petition there is an allegation not contradicted by either of the returns or the affidavits except by the conclusion drawn by Mr. Landon from the alleged fact of membership in the Commuist Party, an allegation that the petitioner has not —— has no intention in the future of engaging and will not engage in any activities of the sort attributed to him by the District Director. That allegation appears in paragraph 18 and 18(a) of

our petition, which is re-alleged in our traverse, I think it is correct in logic to say that if, in the absence of countervailing evidence then as to present membership, the court were to hold that a sufficient showing has been made ——

Mr. Binns: Your Honor, may I interrupt counsel for a moment? I have 18(a) and it says:

> "That said petitioner was arrested as aforesaid on [fol. 23] October 21, 1950, without warrant and without authority in law."

I wonder if you have misstated it.

Mr. Porter: There are a number of subparagraphs in that section. It is 18(a), the amendment to the petition.

We have authority with respect to this proposition that evidence of present membership in the Communist Party, not rebutted, does not support detention without bail.

It is true the authority antedates the McCaran law but we have shown, I submit, that the McCaran law requires no different finding, makes no different finding and requires no different conclusion.

The case I speak of, as your Honor may recall, is the Perenski (phonetic) case in the Second Circuit, where the Government attempted to justify at that stage, an increase in the petitioner's bond from $5,000 to $25,000 pending the determination of deportability. There they attempted to justify that increase in bail, as the court said, on the ground of the danger to the public safety from his enlargement on bail:

> "But the long administrative record in evidence below,"

the court said,

> "fails to show any immediate or particular danger to be expected from this individual beyond other members of the Communist Party",

[fol. 24] pointing out that no other ground of deportation—no membership in the Communist Party has been shown by the Government.

The Second Circuit concluded:

> "Unless therefore the Immigration Service intends to confine all alien communists indefinitely during

lengthy deportation proceedings, there is nothing in the record to justify the singling out of this individual for unusual treatment."

Now, that is precisely, if your Honor please, the situation which we confront us. And we say, of course, not only that we do not advocate that all persons whom the Government claims to be aliens and members of the Communist Party should be detained in order to justify the petitioner's detention, but we say, on the contrary, that as the Perenski case points out, detention of any such person on that ground alone, in the absence of a showing of activity reasonably supporting a conclusion as to future conduct inimical to public safety is an abuse of discretion and a deprivation of the petitioner's Constitutional liberties.

Just a couple of words more and I am through.

The Court: Two?

Mr. Porter: Your Honor will permit me a literary allusion I trust.

In this posture of the case we are squarely, I submit your Honor, within the rule of the bail decisions which have [fol. 25] been referred to before in this court—Williamson versus the United States, the decision by Mr. Justice Jackson with respect to bail pending appeal on the part of the 11 leaders of the Communist Party. Parenthetically I might state to your Honor a fact which I am sure was a matter of public record, that among those 11 are a number who were foreign born. Nonetheless ——

The Court: Are they all citizens of the United States?

Mr. Porter: No, your Honor.

The Court: That wasn't a deportation proceeding; that was a criminal proceeding.

Mr. Porter: But included among the 11 defendants ——

The Court: It wouldn't make any difference whether they were aliens or citizens.

Mr. Porter: That was not Mr. Landon's position. As I understand it Mr. Landon's position is an alien communist per se belongs behind bars period. And it is the anomalous position of Mr. Landon that alien communists convicted in a criminal procedure are entitled to greater leniency than an alien communist who was not a defendant in a criminal proceeding.

It seems to me that we are now squarely under the Ninth Circuit decision on the Government's attempt to cancel the bail of Harry Bridges following his conviction. And this becomes the more-so in the light of the fact that the Gov-
[fol. 26] ernment's affidavits in the Carlson case on their face show and allege nothing, literally nothing.

They simply allege that he wrote an article for the Daily People's World, a newspaper; that he attended meetings or one meeting I think is mentioned, of the Civil Rights Congress and membership in an organization which is a lawful organization under the present laws of the United States.

Now, to sum up, if your Honor please, here is a man as to whom there isn't a word or a whisper, if your Honor please, in this record of any activities, past, present or ancient history, subject even to criticism let alone prosecution so far as it affects public safety. There is not a syllable but the Government says here:

> "Because you have exercised your liberties under the First Amendment in a way of which the Congress and we disapprove, we assume to ourselves the right to put you in jail and hold you there as long as it may be necessary or convenient."

Now I say to your Honor that to do this to a man who has lived in the United States of America since he was 6 years old, who has made his livelihood here, who is married to an American citizen, who is the father of two young children, whose record is unblemished insofar as the ordinary tests of decent citizenhip are concerned, "citizenship" in the broad sense, I say that to do that with such a man
[fol. 27] smacks of a tyranny which this court should be the first to strike down and to strike down in the same kind of righteous anger which I feel and which I may be expressing now too vigorously.

I think this is a sad day in the United States, your Honor, when such a proposition can even be seriously entertained in our courts and I urge upon your Honor a recognition of the implications of this for the future of our democracy.

Mrs. Rosenberg: I should like to be heard. I should like to point out first, your Honor, that I concur with Mr. Porter

in his theory of the case that present membership in the Communist Party is not the basis for a denial of bail; that there must in fact be shown some present activity upon which to predicate such a denial.

But even assuming that the Government projects the theory which the court itself this afternoon suggested as the basis of the case—that is the court, as I understand it, takes the view that in view of the findings of the McCaran Act, that if one is an active member of the Communist Party such a fact shows sufficient grounds to retain him in custody.

The Court: I say it is sufficient ground upon which the Attorney General may exercise his discretion.

You must remember that you are here today without offering any evidence whatsoever. You are relying entirely on the weakness of the Government's showing.

Mrs. Rosenberg: I don't agree, your Honor, if I may, [fol. 28] that that is an accurate statement of our position.

In our petitions we affirmatively show ——

The Court: The court has said they are to be accepted as true, the undenied allegations, but at the same time —— I was at first inclined to agree with your interpretation and discussed it with you in court and also in chambers. We also discussed this decision but after going over it and finding that the court accepted the Potash decision where it said that in order to upset the discretion of the Attorney General it must be upset by clear and convincing evidence, and then at the same time say that there must be some evidence here, was hard for me to reconcile until I took the opinion home over the week-end and studied it and then came to the conclusion that what the court was actually promulgating was that Mr. Landon or some individual by a mere wave of the hand, by a mere saying "He is a security risk" without having any foundation for that statement was not sufficient.

Mrs. Rosenberg: And you are now saying, your Honor, the Government has laid the foundation by making statements of fact with regard to past membership.

The Court: I will make my findings when we get through.

Mrs. Rosenberg: My point, your Honor, is ——

The Court: The only reason I made the statement I did was because I felt the statement I made the other day might

have been misleading and in fairness to counsel I should [fol. 29] correct any impression that I gave you then.

Mrs. Rosenberg: My contention is, your Honor, that even the Government's theory of the case has not been established by the Government —— the theory that the Government has is that present membership, although I reject the theory, and even on its theory these people should be released —— present membership is the fact on which the detention is predicated. Now in the case of Mrs. Stevenson, your Honor, there is no allegation or statement of fact with regard to present membership at all. All the statements in the return of the Government allude to past membership. There is nothing more recent than 1938 and my contention, your Honor, is that even on the basis of your suggestion today as court opened, that if there is present membership, that this is enough of a fact, enough of a showing by the Government to shift the burden then to the petitioners the Government hasn't met its burden and therefore it cannot shift to the petitioner.

We have shown, your Honor, that in the case of Mrs. Stevenson there are undenied allegations of her living in this country over a long period of years, of having reared a child in this country and the only thing the Government answers to that is that "we have facts which led us to believe that she was in the past a member".

I feel, your Honor, that the Government has not met its initial burden.

[fol. 30] Now, your Honor has indicated also your change in position since we last met was based on a re-examination of the case and on an examination of the McCaran Act.

If the court please, I should like to point out that the McCaran Act does not anywhere characterize the Communist Party per se as subversive. As a matter of fact it is very careful to say that rights under the Constitution are not to be violated in any way. I refer for that point to Section 1(b):

> "Nothing in this Act shall be construed to authorize, require, or establish military or civilian censorship or in any way to limit or infringe upon freedom of the press or of speech as guaranteed by the Constitution of the United States and no regulation shall be promulgated hereunder having this effect."

And that contrary to the view that the McCaran Act sets out the Communist Party as subversive, there are as a matter of fact rather elaborate means by which the Attorney General must prove that as a fact by petition to the subversive Activities Control Board under which there must be a hearing and that is only as to the Party itself; that thereafter the individual members may go in and deny or cancel on the basis which is indicated in the Act, which presumably is that there is not personal guilt; that the only places, as [fol. 31] a matter of fact, your Honor, in which the Communist Party is mentioned by name are in two sections—one in the deportation section which sets out membership in the Communist Party as a basis for deportation and in the second place in the detention section under Title 2 in which, under detention, one of a numerous list of factors which the board may —— the detention board may consider is membership in the Communist Party.

As to all the other findings in the McCaran Act the allusion and characterization, your Honor, are to the "World Communist Movement."

Now obviously if it intended to so characterize the Communist Party there would be no necessity for the control board being set up for opportunity to be heard —— for the opportunity of cross examination and appeal therefrom. So it seems to me, your Honor, it is going beyond the intent of the McCaran Act to find as a fact that the Communist Party as such is subversive. And in addition thereto, to find that any member thereof is automatically and per se subversive.

So on those two grounds, your Honor, on the fact that as to Mrs. Stevenson there has been no present membership and certainly no present activity which constitutes a threat to the country and on the basis of the McCaran findings, they are simply findings and not facts which are still to be questioned and which can still be attacked even under the provisions of the McCaran Act and further under [fol. 32] Section 4(a) read together with Section (f) it clearly indicates that membership or even leadership in the Communist Party as such, shall not be the basis of any prosecution under the prohibited acts.

So for these two reasons, your Honor, I feel that as to the petitioner Stevenson that there should be an immediate release on reasonable bail.

Mr. Fleishman: If your Honor please, I would like to advert again back to the Circuit Court's opinion for a moment and show that at least in this case, in the Carlisle case, as a matter of fact the showing by return and affidavit is precisely the same in both cases —— that is the return in the original case, which the Circuit Court said was insufficient, and the return in this case —— in the return in the first case you will recall that the Government incorporated by reference the warrant of arrest which said that after his entry into the United States he, Harry Carlisle, has been a member of the Communist Party.

Now if from this the inference can be drawn that that is enough to put the burden upon the petitioner then we didn't meet our burden and the Circuit Court should have affirmed in that case but it didn't. It didn't because the Circuit Court said something more was needed. They said on pages 9 and 10, the Circuit Court said that the affidavits to support a return must show facts and not conclusions —— facts not conclusions; that, 1, the denial of bail is required to protect [fol. 33] the country and, 2, that petitioner's relief will prejudice the United States.

There should be facts as to those things and not conclusions. If conclusions were sufficient then according to the Government's contention those conclusions could have been drawn from everything they had in that return and yet the Circuit Court said that that wasn't sufficient; that we have to have some facts to show these two things or perhaps one of these two things would be enough.

Now, as your Honor indicated at our last session, the affidavit in the case of Carlson doesn't by any stretch of the imagination reach that.

It is hard to characterize it in any way other than to say it was the Director's best effort to meet this test but it didn't meet the test because it said that he has been a member of the Communist Party, but they said that, in the original petition, and the Circuit Court said that was insufficient.

Other than that —— other than that the Director has said that, if I remember correctly, he was an active member of the American-Russian Institute and that he spoke before a Civil Rights Congress meeting, and that he was reported in the newspapers to have given a speech on the Communist policy.

Now, these things don't —— just don't meet the test set forth in the Circuit Court's opinion.

[fol. 34] One other thing, in the Boyd case, if your Honor recalls on page 8 there is set forth part of the telegram that the Government had and which was incorporated in the return. And then they refer to "alien Communists" —— presumably currently alien Communists and they set that forth in the return, in the Boyd case presumably —— I don't myself have the affidavits so I don't know all that was in there, but this part of it, which was set forth in the decision, shows that in the return there, the Boyd case ——

The Court: The Boyd case was the case where Boyd was the commissioner, was it not? The Seattle case?

Mr. Fleishman: Well, you were referring to the Landon case so I took Boyd as the counterpart to that.

But there was an allegation in the petition, at least inferentially, that the petitioner was an alien Communist and again the Circuit Court said that was not sufficient; that either by some evidence or by some affidavit of the Government's they would have to allege facts which would, as I say, show either of the two things that they set forth on pages 9 and 10 of the Carlson case —— that is the denial of bail is required to protect the country and certainly the fact of a mere allegation, perhaps, that Mr. Carlisle would prejudice the country by perhaps sabotaging a ship or something like that. If these are the things the Government is working on these are the things that have to be set forth.

[fol. 35] We went up last time, as your Honor well knows, on this basic assumption, and the Government set it forth in the warrant, that they had been Communists and since they had been Communists they were this danger and the Circuit Court said that was insufficient and certainly in this case, the Carlisle case, there is not one whit more than there was in that case.

For that reason we believe that regardless of whether your Honor is right generally in the proposition asserted at the beginning or whether the petitioner is right generally on the proposition, insofar as the Circuit Court is concerned there has to be more than an allegation —— general allegation. There must be facts which would lead to the inference —— from which a person could draw the inference that the person would be a danger to the United States if enlarged on bail.

The Court: I understand the Government's position to be, and I want to see if I am correct, the Government's position is that the affidavits here and the return is all the information that you are going to reveal to this court.

Mr. Binns: That is correct, your Honor.

The Court: That is all I want to know.

Mr. Fleishman: Now with regard to the last statement, there is an interesting addition —— I think this is almost the only addition ——

Mr. Binns: Your Honor, you requested us at one time to have the hearing officers present so you could go into the [fol. 36] question presented here, and why there had been continuances.

The Court: They haven't made any point in the argument so far about that.

Mr. Binns: We have set that forth in the affidavits but you did request the officers to be present and they are present.

The Court: Under this new warrant there hasn't been any serious question about that except as to one petitioner. I am speaking now about the hearings having been postponed from time to time at the request of the alien. In the other case there has been a partial hearing and they are taking additional hearings in the Hawaiian Islands. There is no dispute as to that, is there?

Mr. Fleishman: I don't think so.

Mr. Tyre: Not on that point.

The Court: So at this particular period, under this warrant, they can't claim there has been any undue delays.

The Circuit Court asked this court to take note of the delays. I don't know what they mean by that. But they asked me to take note of it.

However under this new warrant and proceedings there have been no delays as yet, has there?

Mr. Porter: None more than ordinarily. No more than would ordinarily be the case by virtue of the necessity of preparation and conflicting commitments of counsel.

[fol. 37] Of course the litigation in these very cases with which we are concerned today interrupted the deportation hearing to some extent so far as I was concerned.

Mr. Fleishman: With regard to the question just propounded by your Honor to the Government, there is this interesting addition of the Boyd case to the Carlson one it seems to me.

Here the Government is alleging in substance, that it has good reason —— that it has considered all of the relevant facts and has come to this conclusion that they ought to be denied bail.

Now in the Boyd case the court said on page 9, and I will paraphrase it, that mere proof of consideration of the relevant facts by the Director is insufficient. In other words merely stating, as the Government has here stated, that it has considered all the relevant facts and having considered these facts has come to this conclusion, the Circuit Court said that is not sufficient. You have to tell us what those facts are. Let the petitioners, if they will and can, deny them or explain them or if they prefer not to then let the court weigh them —— let us weigh them and see whether they have the weight that would call for detention without any final determination.

The Court: Yet on the other hand the court said that Mr. Landon doesn't have to reveal his hand.

Mr. Fleishman: It so states, your Honor, but I am quite [fol. 38] willing to agree that the opinion is far from a model of clarity, but we do have to work with it and there are certain things that are self-evident in it.

One of the things and the thing that I am trying to urge at this point is that the Circuit Court said that something more was needed than we had last time.

The Court: Yes.

Mr. Fleishman: Something more?

The Court: No dispute about that.

Mr. Fleishman: Now, I have looked and I can't see that anything has really been added at all because again when we realize that the former return, the return in the first case incorporated by reference the warrant which stated membership in an ambiguous way, from the warrant you cannot tell whether they were claiming present membership or merely past membership. They simply said "after entry has been a member of the Communist Party". It is precisely the same language as used in this return —— precisely the same language.

The difference is that instead of incorporating it by reference from the warrant the Government does now allege it in the return itself, but surely that is not of material difference.

The Court: How about the affidavit?

Mr. Fleishman: Let us look at the affidavit, if your Honor please. The affidavit says with regard to member-
[fol. 39] ship in the Communist Party—paragraph 2—it is a long one, the operative sections, but with respect to Harry Carlisle it says:

> "With respect to Harry Carlisle, the petitioner herein, the service is in possession of evidence showing that said petitioner has been a member of the Communist Party of the United States and has actively participated in its program; more specifically, that in 1932"

something happened; that in 1933 something happened; in 1935 something happened; in 1937 something happened.

Then coming to more recent history;

> "That in 1949 said petitioner was reported in the press as a speaker on Communist Party topics and activities; in 1949 said petitioner was active in the affairs of the *the* American-Russian Institute and was on its list of approved speakers" (said organization has been designated by the Attorney General as Communist); "that in August, 1950, said petitioner was a speaker at a meeting of the Civil Rights Congress in Los Angeles (an organization designated by the Attorney General as Communist)."

These are the allegations, your Honor. If all of it is true it is no more than was set forth in the former return, namely, that the petitioner has been a member of the Communist Party.

Now if I am correct that something has to be added to
[fol. 40] the former return to make this return better then it is our contention and by "our" I refer to the Carlisle case because I am not sure what the other affidavits have in them, but in the Carlisle case there is nothing —— nothing at all has been added and since nothing has been added the return is obviously no good.

Now, I would like to at this point drop the merits of the case and just call to your Honor's attention something which has but, recently come to my attention and which I think, at least, ought t obe before your Honor briefly, and

that is that Harry Carlisle is a sick man, and that his present detention in custody constitutes a grave danger to his health.

This fact has been called to Mr. Landon's attention and he said that he would give it his consideration but that perhaps he would be released by your Honor at this hearing.

I spoke with Mr. Landon after the last hearing and he said he would postpone decision on that until after this hearing but I say this merely to your Honor upon, your Honor, the fact that this is an important matter and if it is a civil case or not the man is in custody and he is suffering..

The Court: I realize that anybody in custody is confronted, counsel, with a serious matter.

Mr. Fleishman: And he has been there now for some two and a half months, and certainly most of that time, as the Circuit Court itself has said, most of that time it has [fol. 41] been an illegal detention because there was never any sufficient return made.

The Court: They didn't say the detention was illegal. If they had said the detention was illegal that would have ended the proceedings and I wouldn't have had any more trouble.

Mr. Fleishman: Well, at least its legality wasn't sufficiently established —— at least I think we can draw that inference from the opinion.

The Court: It held in substance that the pleadings in the former proceding were insufficient.

Mr. Fleishman: The pleadings of the Government, your Honor.

The Court: Yes.

Mr. Tyre: If the court please, there hasn't been a return technically filed in the Hyun matter. However, I will waive that technicality. The number ascribed to the return was, I think, the one that was used in the first proceeding which was displaced.

I think that should be part of the record so there won't be any question about that.

I don't intend to repeat what Mr. Porter has said.

Mr. Binns: At this time may I move to amend the number on the return?

The Court: I thought the clerk had corrected that. They have all been corrected and put in the files. I think the

[fol. 42] clerk detected they were the wrong numbers and corrected them.

Mr. Tyre: I discovered that as the first error. There were a few others which I discovered and which I would like to call to the court's attention.

As I was saying I don't want to repeat what Mr. Porter has said but I do want to add one or two brief items and by "brief" I don't necessarily mean in my opinion they are unimportant.

Your Honor has called our attention to the lengthy findings made concerning the various activities of the organizations and particularly the Communist World Movement in Section 2 of the Internal Security Act of 1950.

Mr. Porter has stated and I am inclined to agree with him, that there is nothing expressly stated in those findings which applies to a particular individual of the Communist Party.

Now, he has given you several constructions of the Act and citations within the Act itself which he believes buttress that conclusion.

I would like to add one or two others.

First I would like to call to your Honor's attention Section 6(a), which involves the question of denial of passports to certain individuals.

Now there, unlike the section which we are involved with [fol. 43] here, where the aliens are being held without opportunity to bail, Section 6(a) specifically points out that membership itself in the Communist Party will be a basis for denying a person's application for a passport, rather than to say the Department of State or the Secretary of State shall in his discretion determine who shall and who shall not obtain a passport, and thereby use various factors to determine that.

In Section 6(a) Congress specifically stated that a member of the Communist organization, as it is defined in the Act, should not be entitled to a passport, and they say there is no specific reference of a basis upon which denial shall be made of the freedom of an individual under the section involved here.

Secondly, there may be a question raised in your Honor's mind, as in mine, by all these findings. What do they mean if it doesn't per se indict an individual member of the Communist Party.

Well, your Honor will recall that the principal purpose of this Act, at least as we gathered from the remarks made by the various members of Congress during the debate on the Act, and in fact in the various statements made before the committee, before the bill was introduced —— after the bill was introduced into Congress.

The principal purpose really was to cause registration of Communist Party organizations, Communist front organ- [fol. 44] izations together with the inferences that are drawn from that —— that is from the registration itself.

Now, in order to require that a Communist organization or any other organization be required to register, I think the Congress had a duty to make certain findings. I am not here to argue whether the findings were constitutionally made or correctly made, but merely to point out that those findings, in my opinion, are for the purpose of establishing the constitutionality of the Communist Party and Communist front organization registration section. That is the principal objective and purpose of this Act and, therefore, it purposely does not make reference to single individual members of the Communist organization or Communist front organizations as being in and of themselves such dangers or risks that certain penalties should be visited upon them.

Another important thing that I think we must remember is this, that the Bill of Rights, as I read a number of Supreme Court cases, applies to aliens equally as it does to citizens.

If a person is entitled to his liberty it is because of the Bill of Rights. He cannot be deprived of that liberty without proper due process of law.

Now if a member of a Communist Party organization is per se a risk whether or not he be an alien or whether or not he be a citizen, then a citizen as well as an alien, if he were simply found to be a member of the Communist Party organization or a Communist front organization, could be [fol. 45] imprisoned or could be in some other way deprived of his liberty or his property without due process of law, so to speak —— that is without more than a Congressional finding that membership in that organization was a basis for the denial of his liberty.

Now, that is the conclusion that must inevitably be drawn

if we conclude that Congress intended simply that a court find a person be a member of a Communist Party or Communist Party front organization and that there follows per se from that that he is a danger or a risk. In other words once a court should find that any person, whether he be an alien or a citizen, be a member of the Communist Party then that in itself establishes a basis for depriving him of certain liberties and properties.

Now, I don't think that was the intent of Congress. I think Congress intended to make certain findings with respect to the Communist Party organization —— a Communist front organization to visit upon it the requirement of registration, but I don't think that it was intended by Congress that a court find that an individual, simply because of his membership in and of itself alone was a basis for depriving him of any liberties or any of his properties without a finding by a court to that effect —— that is without a regular judicial trial which this, of course, does not purport to be.

We are involved here, of course, only in a summary pro-
[fol. 46] *pro*ceeding.

I move then to the question of —— a preliminary question on the question of delay.

The Circuit Court has suggested that is an important element to be considered and I think we should consider it.

It is true that the new warrant in this case was issued on October 31, 1950 and that relatively little time has passed since then.

The Supreme Court in the Mangrum (phonetic) case has held that this court has the power to, not just to look to the immediate proceedings before it but to look to the entire proceeding which preceded it and surrounded it —— the particular proceeding in which we are involved, to determine whether or not this detention is legal or illegal.

Now, we know that that warrant, issued on October 31, 1950, was done simply as a procedural matter. It was done solely because at the time this original writ of habeas corpus was being heard there was some question as to the legality of the arrest under all the circumstances, and therefore a second warrant was issued in order to provide for this particular proceeding.

The new warrant was not issued as a matter of —— in order to start all over again because they didn't feel that

the original warrant properly alleged sufficient facts to cause the deportability of the aliens. It was done only as a [fol. 47] procedural matter and therefore ought not be concerned when we consider delay, with the date of October 31st. We rather should be concerned in the case of David Hyun with the date of July 7, 1949 when the original warrant was served —— was issued and served on David Hyun.

Hearings were held —— some hearings were held after that date and the fact remains that hearings are still being held. They were started and they were stopped. They were started and they were stopped and now they have been started again. I speak of that literally, not by way of hyperbole. Actually this is the third proceeding, all based on the same general statement of fact and that is that David Hyun was a member of the Communist Party and therefore he is deportable under the laws of the United States.

This is the third proceeding and the fact remains that it has been since July 7, 1947 that these proceedings have been pending and yet there has been no order for deportation.

Now, in the David Hyun case it is, as the return indicates —— a hearing was held. There was no continuance granted. There was a statement that counsel requested a continuance. I don't deny that.

The return, I might say parenthetically, does not state how long a continuance was sought nor what the reasons were, but I don't think it is material because actually the hearing was held on that particular day.

[fol. 48] The return then goes on to say that, "The hearing has been continued —— not at the request of counsel or of the alien, but at the request of the Government for the purpose of taking depositions where? In the City of Honolulu and territory of Hawaii", more than 3,000 miles away.

Now, that was back in November or December when the hearings were held. I have forgotten offhand the exact date.

Today is now January 9 and as yet there are no allegations that the deposition have been taken nor that due process has been accorded to the alien to be present at the hearing or to cross examine such witnesses.

In brief, in matters of this sort, deportation matters, necessarily there has to be considerable delay in time in

order to obtain witnesses and bringing them here and cross examining them and allowing both parties considerable leeway to present their various sides. I don't say that by way of criticism, necessarily, of the deportation proceedings. Perhaps they could be more expeditiously carried on but in any event the Director of deportation proceedings, as they now exist, are such that quick, early and expeditious hearings are not being held. And I say again that does not necessarily indicate fault on either side.

The Court: Probably there is some fault on both sides.

Mr. Tyre: Well, in the Hyun case actually there has been no delay.

[fol. 49] The Court: As long as they are here there is no haste about having a hearing in the first place.

Mr. Tyre: That is correct.

The Court: Particularly if they are on bail.

Mr. Tyre: As long as there is no particular harm being visited there is no particular need to hurry except, obviously, to dispose of the proceedings so it isn't hanging over a person's head. But in any event it takes a long time for these procedings to be terminated. A very long time. In my own case they are taking depositions or will take them, I am not sure which, in Honolulu. I presume there will be an opportunity to cross examine those witnesses sooner or later or to file cross interrogatories or some procedure worked out and then the opportunity, perhaps, for other witnesses for the Government to be presented. I don't know. And then for the alien himself to put on a defense.

The Court: Just a moment, counsel. Let me ask this questions. If an alien is dangerous to the security of the nation is his personal convenience to be given consideration?

Mr. Tyre: No. I think what the court has in mind, once the court comes to the conclusion ——

The Court: I am not trying the merits of this case. It is being tried now on a procedural matter and it is being heard by me on a procedural basis. In other words the only question is whether or not the Government has made suffi-
[fol. 50] cient showing to now shift the burden, as provided in the Potash case, to the alien.

Mr. Tyre: I am only repeating, your Honor, what the Circuit Court has deemed to consider as an important element.

The Court: Then there should be a preliminary hearing. You have practiced law long enough to know that at preliminary hearings the defense always makes the other side show its hand.

Mr. Tyre: At least enough to establish probable cause.

The Court: And you have an opportunity to cross examine the witnesses. Yet on the other hand it says here that they shall not be compelled to show their hand. Now, there can't be a preliminary hearing without showing their hand. We also know that as far as the Federal Government is concerned it does not have to show its hand. If the district attorney were to walk in here today he could file an information against one of these aliens and the Government wouldn't have to show its hand until the time of trial.

The grand jury meets, I think, tomorrow, and will file numerous indictments against various individuals. You don't know what happened in the grand jury room and the Government doesn't have to reveal that even in a criminal proceeding, but this is a civil proceeding and it is controlled by the executive.

Mr. Tyre: There are two things. First of all I expect in grand jury cases if an indctment arises, and in all other [fol. 51] criminal cases where the United States Attorney comes into the clerk and slams down a complaint and demands an arrest the defendant will be entitled to bail.

The Court: Suppose there is a man arrested for treason. We have a man now who was arrested for treason who has been in jail for three years waiting for a ruling on his appeal following trial. That was about three years ago. I intended to try the case but I was taken sick and another judge tried it.

Mr. Tyre: I think we can say the general rule is when the United States Attorney asks for the arrest of a man that man generally, with few exceptions, has the right to bail.

In any event, the second point I want to make on what your Honor observed is, and it doesn't really have any direct relationship yet to the question of delay ——

The Court: I don't think delay is an issue in this case.

Mr. Tyre: The Circuit Court indicated ——

The Court: Asked me to take note of it and that is the reason I am doing it.

Mr. Tyre: I think the extent to which the court will recog-

nize that there is a current risk ought to be considered in the light of a lot of facts and one of those facts is the question of how long it is going to take —— in other words the court might say: "Well, I think perhaps there is a very slight risk in the individual involved. It isn't too great [fol. 52] and after all this man is going to be in jail, if we don't give him bail, for another month or two months or six months or a year or two or three years, which is literally very possible.

The Court: Counsel, that is where I think you do not fully appreciate the position of the court in this matter. We haven't the power to exercise the discretion and the only time we are allowed to interfere is when there has been an abuse of discretion. That is a discretion that is vested in the Attorney General.

Now, there isn't any question in my mind that if either one of these four people were charged with a public offense in this court, with their background, that the court would be willing to allow them very nominal bail. That is if they were charged with any public offense but here we have a different situation.

I make that statement in fairness to the parties involved. There is nothing here nor in their background, outside of their Communistic activities, as set forth in the return and affidavits, that would make them security risks. When they use the word "security risk" they mean a risk to our national security and that is the way I have approached this question.

It isn't a question of whether I have unbridled authority or discretion. It is rather a narrow field that I am dealing [fol. 53] in and that is the question of whether or not the Attorney General has placed sufficient facts before the court to indicate that there has been facts before the Attorney General upon which he could reasonably exercise a discretion.

Mr. Tyre: Now that discretion and the exercise thereof reasonably has to be exercised with relation to the facts.

The Court: But there are two factors in this case, first, as set forth, the personal history of the petitioners so far as their conduct is concerned and, secondly, whether or not their activities as alleged members of a Communist Party organization and that that organization is considered to be a world-wide conspiracy to overthrow this Government by

force and violence, whether or not on that theory alone the Attorney General would be justified in denying these people bail. You must remember that the Attorney General doesn't enjoy the expense involved in the commitment or confinement of these people. It costs money. I imagine that is why I probably fell into the error before, according to the Circuit Court. I assume when the Attorney General acted he exercised his discretion knowing that his budget is limited and the expense of maintaining these immigration places where these people are confined is expensive. That is where I fell into error before.

The question now is whether or not what has been added [fol. 54] here in the return indicates that the Attorney General has exercised discretion.

Mr. Tyre: And the court has to review that discretion.

The Court: Yes, I have to review it. There comes a point, however, if he has exercised his discretion, as I understand this opinion, then the burden does shift to the alien to show there is an abuse; but they first have to show that there has been an exercise of discretion and that burden is upon the Government as I interpret this opinion.

Mr. Tyre: And it is my position, your Honor, that as a matter of fact based upon the petition and the return and the affidavit attached to the return, there has been no sufficient showing that there has been a reasonable exercise of the discretion or if there has that as a matter of law on the face it shows that he has exercised his discretion in doing so he has abused that discretion and this is the reason for it.

I think your Honor indicated at the very outset that this was like a preliminary hearing.

The Court: I don't think it is like a preliminary hearing. In a preliminary hearing you have to show your hand. If you can't show your hand there isn't a preliminary hearing.

Mr. Tyre: You concluded there were two things for the Government to prove, one that these people are aliens and, secondly, that they were aliens of the type that were per- [fol. 55] mitted to be jailed without bail under the Act, and in determining that you said, if I got you correctly, "Are these aliens currently active in the Communist Party or Communist front organization?"

You said they had to establish those two facts existed, one that they were aliens and that they were active at this time with the Communist Party organization.

I think there is only one place we can look to see whether or not that burden, that preliminary burden has been maintained.

The Court: The only question here is whether there were sufficient facts, inasmuch as they are all admittedly aliens —there is only factor remaining and that is whether there were sufficient factual matters before the Attorney General or his authorized representative, upon which he could base and exercise his discretion. In other words, as far as the record shows here it might have been a mere whim without any substance upon which it was based

Mr. Tyre: We are going sort of around in a circle.

The Court: I know we are. We are going all around the circle and have been all afternoon.

Mr. Tyre: And this has been going on for some time, I am afraid.

The Court: It isn't going on very much longer. I am going to stop you pretty soon.

Mr. Tyre: I haven't had an opportunity to say very much [fol. 56] in this entire proceeding. I would like a few more minutes, if I may.

We are faced with the question as to whether or not past membership in the Communist Party lays a basis for the Attorney General exercising a reasonable discretion.

The Court: I think you should say this, counsel: Past membership plus present activities in connection with a Communistic or Communist front organization.

Mr. Tyre: Well, with respect to the addition that your Honor has made, that is present activities, that may be a question all right, that has to be faced, but I see nothing in the return or the affidavit to show any of that. I concede that the return and the affidavits in the Hyun case indicate that there has been no past membership on its face, but there is nothing in the Hyun return nor affidavit —— that is in the affidavit attached to the return, to show any current membership or activity in the Communist Party or Communist Party organization.

The Court: And as I understand the picture, as far as the immigration authorities are concerned, as far as depor-

tation is concerned, they don't have to show any more than the fact that at one time he was a member of the Communist Party.

Mr. Tyre: That is the position, as I understand it, of the Attorney General.

The Court: Yes. Isn't that the provision of the law as [fol. 57] it now stands? For instance a person who was a Communist, we will say, in 1940, a member of the Communist Party in 1940, so far as they are concerned in an order for deportation, that would be sufficient and for the purpose of deportation they do not necessarily have to show their present activities.

Mr. Tyre: That is correct, that is the way the law now reads and that is the way the law read before the McCaran Act and that was the way the law read for a considerable period before.

The only change as I understand it, is that the McCaran Act made, at least the Government has interpreted it, it is no longer requiring proof of the activities of the Communist Party but mere membership is a basis now for deportation.

But of course that is far from the question before us as to whether or not they are entitled to bail pending that. As your Honor has correctly and aptly pointed out several times, we are not here deciding the deportability of the alien.

The Court: Now, and I am not here to exercise a discretion, if the Attorney General has exercised discretion, until you by your own evidence or by evidence in this case show there has been an abuse of discretion.

Mr. Tyre: Well, now, the Attorney General ——

The Court: I am not going to argue it any more. Keep on talking until you run down and then I will rule.

Mr. Tyre: Well, I won't run down but I will stop after [fol. 58] a reasonable time, your Honor.

The Court: All right.

Mr. Tyre: I have considerable wind left. I don't intend to use it except to th extent I think it is necessary and that is to point out a few more points.

Past membership, as I undertand it, is the contention of the Government as being a sufficient basis for the deportation of these aliens, and in addition as I see it by the affidavit and the return is also a sufficient basis for the

imprisonment and detention of these aliens without bail while awaiting for the deportation proceedings to terminate. I say there is nothing in the affidavit or the return to show present activities.

Now, prior to the McCaran Act, according to the Potash decision, that was a basis for the Attorney General imprisoning these aliens and other aliens if they could show a reasonable risk was involved. However, prior to October 21 the Attorney General did not attempt to exercise such discretion. He apparently didn't feel, prior to October 21, that there was anything in the records of these individuals to warrant their being detained without bail.

Now, what has happened since October 21st is absolutely blank in the return.

The Court: If you were of military age you wouldn't think it has been static since then.

[fol. 59] Mr. Tyre: I am talking about in the return itself.

The Court: I think we have to take into consideration the world tension when considering these matters.

Mr. Tyre: I agree with your Honor. I think that is another circumstance but the court has said ——

The Court: Do you want me to advise them there is a war in Korea and an undeclared war in China?

Mr. Tyre: If your Honor please, it is not even stated that the Korean war or the war in China had anything to do with it. Of course the war in China could not have been involved because when these people were arrested it was not in existence.

The Court: Do they have to put in an affidavit that there is a conflict between the East and West and we are fighting it out on the battle fields of Korea? Can't the court take judicial notice of that fact?

Mr. Tyre: Of course it can take judicial notice of that fact and many other facts. But the defendants—aliens, rather, have no way of knowing which particular facts the Attorney General is going on which lay a foundation presently for these persons being—David Hyun in this case being a current risk to the community and welfare of the nation. He has no way of knowing and the Circuit Court says he has a right to know. All that we have seen here, all that has been told to us here is that there was past membership. There is nothing since 1947 except one statement [fol. 60] that David Hyun was a director of education in

1949, without indicating and incidentally, if the court please, the date in 1949 when that took place, and I think it is important for this reason—Mr. Binns' memorandum of points and authorities, which I saw about 20 minutes or half an hour ago, I note has several authorities on the point that once a person is established in a certain condition or a certain relationship and a few other presumptions—a presumption of certain other statuses, that thereafter they follow as a presumption that they continued in that status, but he has no case, assuming an establishment of one time Communist Party membership that that continued, nor of anything incidentally closely analogous.

Now, a number of things have occurred since the last allegations of fact in the return and the affidavit that David Hyun was a member of the Communist Party.

Now, the last allegation of fact, if your Honor will recall, was in the Hawaiian Islands and after he came over here in 1947, all in general terms without stating specifically what he did or where he went or anything about it. And also with the one statement that he was educational director in 1949.

Now, does that presumption continue up to October 21 and, to-wit actually February 10, 1950. I say it does not continue for this reason—the same reason your Honor has pointed out.

[fol. 61] Certain very, very important things have happened since July 7, 1949, which was the date, incidentally, when this first warrant was served upon David Hyun.

First of all they said "educational director in 1949". We don't know which date but at least in 1949 he was served for the first time with a warrant of arrest charging him with Communist Party membership and therefore deportable under the laws of the United States.

That in itself I think, alone, establishes enough to rebut as a matter of law a continuing presumption of Communist Party membership. Secondly there was the situation in June, June 25 of 1950, the Korean war itself which I think altered the world situation sufficiently to raise certain questions about the presumption continuing that existed back earlier in 1949. And finally the passage of the McCarran Act itself on October 21, 1950, or September 21, 1950, which again raises, it seems to me, considerable doubt as to the

continuing presumption of the membership, if such has been alleged or proved, of David Hyun back two years earlier.

Now in one case, *Williams versus Paine*, 169 U. S., page 55, that I have been able to find, at page 73, there was involved a question of a power of attorney that had been executed by a wife to her agent to transfer certain real property.

After that power of attorney had been executed the United States became involved in the Civil War and the [fol. 62] agent went down to the Confederacy. He was followed later by his own principal. He exercised his power of attorney by transferring the real property and the question arose as to whether or not the power of attorney of an agency which had been executed prior to the war, presumably continued after the war.

The court held under all the circumstances, because she followed him down into the Confederacy and they continued to live there and they had problems in common and so forth, that it did continue but the court said this:

> "Where it is obviously and plainly against the interest of the principals that the agency should continue or where its continuance would impose some new obligation or burdens, and certainly if would here, the assent of the principal to the continuation of the agency after the war broke out will not be presumed but must be proved either by his subsequent ratification or some other manner".

And that is dictum because in fact they found it had continued.

I think the dictum is important. In other words where the situation arises that it is obviously not to his interest to continue the presumption falls. And I think, your Honor, that all that has been established here, the most that has been established is that there was a past membership up until 1945 and then a general statement as to membership, [fol. 63] without specifically stating how or why, until 1949, and then on that date "educational director."

Since that time these various things have occurred which I say remove any presumption of continuing membership. There can be no evidence before this court, your Honor, of present membership or activity and obviously no allega-

tion or proof of any kind that he is currently a risk because of anything in particular which he has done or said.

Whether or not it be protected by the First Amendment David Hyun ought in all good conscience be relieved at this time from imprisonment, at least without the opportunity of posting bail.

Thank you, your Honor.

The Court: Counsel, how about this man Carlisle whom they say is in ill health?

Mr. Binns: Your Honor, Mr. Del Guercio says he was examined by the public health physician in San Pedro and they received a letter in which the physician said he found nothing wrong with him. Isn't that correct?

Mr. Del Guercio: That is correct.

Mr. Binns: And your Honor, in the Carlson case, through inadvertence it reads "Incorporation by reference of the traverse to include only the original petition and not the amendment which was subsequently filed and designated as paragraph 18". I would at this time move to amend [fol. 64] my supplemental return by interlineation to place the words in paragraph 3:

"deny the allegation contained in paragraph 18-A".

The Court: You had better file an additional affidavit. You can't amend Mr. Landon's affidavit very well, can you?

Mr. Binns: No, this is the return, your Honor.

The Court: He signed it, however. Didn't he verify it?

Mr. Binns: Didn't verify it, your Honor. He just signed it.

The Court: I don't think you can amend his verification.

Mr. Binns: That was an inadvertence on my part.

The Court: Have you anything further to offer?

Mr. Binns: No, your Honor. The court has expressed my version of the law and my version of the law is that what they have been endeavoring all afternoon to argue is that this court should usurp the function which the law has given the Attorney General, and that you should take on yourself the exercise of discretion in these cases when the Internal Security Act specifically, legally and constitutionally places that discretion in the Attorney General.

For instance an analogy that occurs to my mind is what they would like to do. Mr. Tyre desires to give you a set of facts indicating that because of the war in Korea or because of the Internal Security Act the man might have

changed his mind, but Mr. Tyre, your Honor, won't allege [fol. 65] that and he won't offer any proof as to it.

I feel that we are in this position: The court here is not the Attorney General and the court is not trying de novo the discretion of the Attorney General. All that the court here is to do is to examine and see if there has been an abuse of discretion by the Attorney General.

Now, we have offered the allegations in the return that these people are active Communists and that they are security risks. Now then we have given the evidence upon which that is based. They have come forth with nothing.

The Court: Well, if you want to file that additional affidavit I will have to await until it is filed before I can make any ruling.

Mr. Porter: That is only in the one case, your Honor.

Mr. Binns: That is just in the Carlson case, your Honor, and I possibly can have it down here by 5:00 o'clock.

The Court: I shall not be here at 5:00 o'clock but I shall be here tomorrow morning.

I feel if that affidavit is filed the Government's pleadings are sufficient and that the Potash case comes into play and that then the burden shifts.

I assume that counsel are going to take the same position as before—they are not going to offer any evidence, is that correct?

Mr. Porter: We are ready to submit in the Carlson case, [fol. 66] your Honor.

Mrs. Rosenberg: And in the Stevenson case as well, your Honor.

The Court: I shall not make any formal ruling until after the affidavit has been filed. After the filing of that affidavit then I will determine whether or not there is sufficient evidence here to indicate the Attorney General or his assistants, have exercised their discretion in the matter and the burden then shifts to the petitioners to establish the allegations of their petition that there has been an abuse of discretion.

I realize, of course, that there will be a notice of appeal filed and then the Circuit Court can again re-examine this case and determine whether or not I have properly interpreted their decision; but I am wondering whether the Government would not make some concession as to the release of at least two of these petitioners during the time

of appeal. I realize I can release them myself but I was wondering if the Immigration Department wouldn't join with me, as far as Mrs. Stevenson is concerned and Mr. Carlisle, whose condition of health has been raised here. I was wondering if he couldn't be released on reasonable bond pending an appeal.

Mr. Binns: Your Honor, we are in this position with this claim of illness by Carlisle. As I understand from Mr. Del Guercio it is claimed he has tuberculosis and that is some-[fol. 67] thing that can be isolated and the doctors can be quite positive about it. They are positive he doesn't have it. He has been examined by the public health service.

The Court: Yes, and I have had people here where a cardiograph showed they were in perfect health but fell dead before they got out of the office.

Mr. Binns: We feel there is no basis for it and we feel there is no illness here to be considered.

Now, as to releasing two of these people on bail, your Honor, there have been discussions in which Mr. Landon has participated, as I understand, with the attorney from New York, Carol King, and the outcome of that conversation, as I understand it, was that he was not going to release them on bail. He has communicated with the Attorney General and the Attorney General's attitude is that he is not going to change his position.

The Court: After I make my formal ruling I will hear from counsel on an application if there is a question of this man's health being involved, if the alien is willing to pay the expense. If he is the court would appoint an independent physician to make an examination. If he is ill it seems to me he would not be very harmful if he was at liberty. I don't want to be a party to confining an individual and thereby impairing his health.

Mr. Fleishman: If your Honor please, in connection with [fol. 68] the Carlisle illness matter, just so the record is completely clear on that point as to what our assertion was, the assertion was before Mr. Landon that Mr. Carlisle did have tuberculosis and that prior to the time he was arrested and put in custody it had cleared up and it was in an arrested state.

I spoke to his doctor who told me that, as we all know, it can easily flare up again especially when the diet is inadequate as I believe it to be in this case, and especially in

view of the fact that for some six weeks now Mr. Carlisle has had continuous bronchitis which is a very, very dangerous symptom.

Now it well may be that the X-rays taken by the Government do not disclose present active tuberculosis and it may also be the fact that it is on coming. In other words, the X-rays don't show it now. Because of that that doesn't mean he is not in a serious condition, and it is the serious condition that we are now urging be considered by your Honor.

Mrs. Rosenberg: As for the Stevenson matter, your Honor, although the Attorney General is reluctant to release her, I don't think that should be binding on this court.

The Court: I realize it is not binding. I have been trying to get some concessions out of them without having to make a ruling in that respect. But I feel that as far as Carlson is concerned I would not give any serious consideration to an application for bail pending an appeal in the event [fol. 69] that the affidavit is filed.

I have indicated in a sense how I am going to rule and I have considerable sympathy for anybody who is being held in custody while a legal battle is in progress. They are the victims of a legal contest while we are trying to determine what a law means.

If the affidavit in the case of Mrs. Stevenson is not very strong I will consider an application for bail. That is the reason I wanted you to weigh that particular angle.

In any event the matter will stand submitted and I will make an order as soon as the affidavit is filed.

I want to make this clear if I haven't already made it clear that I am not passing upon the question of whether or not these people are properly designated as dangerous aliens. All I am passing upon is whether or not the Attorney General has had facts before him upon which he could exercise his discretion.

As a side remark, this case demonstrates the weakness of our legal processes during periods of national emergency. I feel that during such times (having in mind the experience of World War II) our courts represent the weakest link in the protection of the nation from within. I refer particularly to the violations and prosecution thereof, of price and rent regulations.

The courts were the weakest link in the enfofcement of

[fol. 70] those laws because they did not impose sufficiently severe penalties to make them effective. I think that practice weakened the national structure during those times. And now we are facing this question of internal security, and this case, it seems to me, is a splendid example of what we are to expect if we are really threatened with internal upheaval.

During this period of national emergency the courts must take judicial notice that the president has issued a proclamation declaring a national emergency. And likewise we must take judicial notice of the happenings of the day.

I feel the courts should not be a stumbling block to the nation's effort to protect itself from its enemies within. On the other hand I believe that during normal times our courts represent the greatest bulwark conceivable to protect our citizens from encroachment on their civil liberties.

From cases I have read and studies I have made there is indicated considerable inability on the part of our courts to adjust themselves to the emergency and speedily and expeditiously dispose of matters so that the parties may know exactly where they stand. In the presence of a national emergency our cumbersome procedure stays the hand of the executive branch of government in its effort to protect the nation from its enemies.

Considerable delay in this case could have been avoided had this court approached the problem presented, from the [fol. 71] point of view taken by the Circuit Court of Appeals, and ordered these affidavits be filed when the proceedings were first initiated. Because of that it is necessary to retrace our steps and go through the whole procedure once more.

The aliens do not know where they stand. The executive branch of the government does not know whether the courts are going to permit it to take the steps necessary (as provided by Congress) to maintain internal security.

I am making these observations because of the speed with which the appeal of the decision in this case of only a few days ago, reached the Circuit Court, the promptness of that court's consideration and decision therein, all of which proves it can be done. If the same expeditious treatment were given to all cases involving national policies the parties thereto would know within days instead of years, just what rights they have.

Mrs. Rosenberg: Your Honor, may I urge the release of Mrs. Stevenson at this time in view of the fact that the affidavit in question has not reference to the Stevenson matter at all.

The Court: I am not going to make any ruling until I dispose of the entire matter.

Mrs. Rosenberg: But, your Honor, since your Honor already indicated ——

The Court: Until I have formally denied your petition. [fol. 72] Then when you have filed your notice of appeal I will be glad to give your application consideration.

As I indicated the other day I feel the petitions in three of the cases were not as strong as the one in the Carlson case and might present a different problem and the court, with that in mind, may feel inclined to, if there can be some assurances that during appeal these people will report and not participate in activities of this kind as charged here, certainly I am going to give it serious consideration. I have always said I am soft when it comes to keeping a woman in jail. But on the other hand there are some women lawyers I would like to put in jail for a while.

Mrs. Rosenberg: I wish that softness, your Honor, could be produced at that time in favor of the petitioner who already has been in jail for nearly three months.

The Court: I realize that but I am not going to make any order tonight nor until I have formally decided this case. It will stand just as it is and when the affidavit is furnished me I will make the order. I am not going to write an opinion. I have stated here the way I feel and the Circuit Court will have the record before it and all I ask is when it gets to the Circuit Court, if they feel the affidavits are insufficient, that they reverse me with directions to release the petitioners.

The case will stand submitted.

[fol. 73] (Whereupon, at 4:15 o'clock p.m. the above entitled matter was concluded.)

[fol. 74] IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

HONORABLE BEN HARRISON, Judge Presiding

No. 12491-BH Civil

In Re: FRANK CARLSON, also known as SOLOMON SKOLNICK

No. 12492-BH Civil

In Re: MIRIAM CHRISTINE STEVENSON, etc.

No. 12503-BH Civil

In Re: HARRY CARLISLE, also known as HARRY CARLYLE

No. 12505-BH

In Re: DAVID HYUN

REPORTER'S TRANSCRIPT OF PROCEEDINGS
Los Angeles, California

January 11, 1951

Appearances: (As heretofore noted.)

[fol. 75] LOS ANGELES, CALIFORNIA, THURSDAY,
JANUARY 11, 1951—2:00 P.M.

The Court: You may proceed.
The Clerk: No. 12491, In Re: Frank Carlson.
12492, In Re: Miriam Christine Stevenson.
12503, In Re: Harry Carlisle.
12505, In Re: David Hyun.
Mr. Binns: The Government is ready.
Mr. Porter: We are ready, your Honor.
Mrs. Rosenberg: Ready.
Mr. Fleishman: We are ready.
Mr. Tyre: Yes, your Honor.

The Court: Gentlemen, I have called this additional record may be complete.

Among other things the Circuit Court directed me to take notice of the delays in the hearings and I want to ascertain the actual facts and causes for the delays and I have asked the hearing officer to be present. Is he present?

Mr. Binns: Yes, your Honor. There are two hearing officers present. One man has three cases and one man has one case.

The Court: I want them sworn.

Mr. Porter: Before your Honor proceeds I would like to make the record clear that in accordance with the allegations of paragraph 2 of the traverse in the Carlson case, it [fol. 76] is our position in that case that the question of so-called delays at the hearings under the warrant of arrest in the Carlson case, is irrelevant and immaterial in this matter and doesn't have any bearing whatever upon the issues in this habeas corpus proceeding.

The Court: All I know is that the Circuit Court told me to take note of it and I am going to give the Circuit Court the benefit of the record.

Mr. Porter: I would just like to say on that, your Honor, if I may, as I read the opinion what the court is saying there is that the Attorney General may not exercise discretion under any circumstances to hold a person for an unreasonable length of time, having in mind a standard or rule such as that followed by the court in cases such as Caranica (phonetic) versus Nagel and the line of cases related to that.

Where an attempt is made to hold an alien under a final order of deportation which has not been effectuated by the Government, the rule is a familiar one that the Government may not hold a person for what the courts will find to be a more than reasonable length of time under such circumstances, and I think that that is the consideration to which the Circuit Court of Appeals was referring in this case.

The Court: I don't know. Under the Security Act I think they can hold them indefinitely.

Mr. Porter: I might just add this, your Honor, that in [fol. 77] the argument to the court I recall a question being asked by one of the judges on this point and the expression of an opinion by him. I don't remember now which judge it was. It was to the effect that the issue before the court

might have been different had the case been presented say 60 or 90 days subsequent to the time when it was actually argued, the implication being that such a lapse of time might be an unreasonable one regardless of other issues in the case.

I think therefore that that is what the Circuit Court had in mind and in any event it seems to us that the question of so-called delays at the administrative hearings does not bear upon any of the issues here.

The Court: But it will not do any harm and I am going to put it in the record.

Mr. Porter: And we therefore object to it.

The Court: When you say "we" are you speaking for all counsel?

Mr. Porter: I speak for Mr. Carlson in this case. We object to it on the ground of irrelevance and immateriality and for the reasons which I have indicated.

Mrs. Rosenberg: I join in that objection, your Honor, in the case of Mrs. Stevenson.

The Court: Do all parties join in that objection?

Mr. Fleishman: Yes, your Honor, I join in it.

The Court: Swear the witness.

[fol. 78] JOHN B. BARTOS, called as a witness by the Court, being first sworn, was examined and testified as follows:

The Clerk: State your full name.

The Witness: John B. Bartos.

Direct examination.

By The Court:

Q. What is your occupation?

A. I am a hearing officer for the United States Immigration and Naturalization Service.

Q. For what length of time have you been so occupied?

A. Well, on the last designation it has been since November but I have been hearing deportation hearings since 1934.

Q. Which one of these cases has been assigned to you for hearing?

A. Mr. Skolnick or Carlson, and Mrs. Stevenson and David Hyun.

Q. We will take the Carlson case. There is a record here that there have been some hearings set and there have

been some delays. When was that case first set for hearing under the last warrant?

A. Under the last warrant it was set for November 21st, 1950.

Q. Was it heard on that day?

[fol. 79] A. Yes, sir.

Q. There was a hearing?

A. There was a hearing on that date. There are 44 pages of testimony and on motion of counsel it was continued until 9:00 a.m. on November 28, 1950.

Q. Which counsel?

A. Counsel Porter.

Q. Then what happened on that date?

Mr. Porter: One moment please, sir.

The Witness: Yes, sir.

Mr. Porter: I am having great difficulty in hearing both the witness and the court, your Honor. If you could make it easier to hear it would be a great accommodation.

The Court: If counsel desires they may move over closer to the witness.

Mr. Porter: I will be happy to.

The Court: But I can't guarantee how good your ears are.

Mr. Porter: So far as I know my hearing is normal and my attention is riveted on what is proceeding from the bench.

By The Court:

Q. What happened on the 28th?

A. On November 28th substitute counsel appeared on behalf of Mr. Porter and made a motion for a further continuance.

Q. Who was the counsel that appeared?

A. Mr. Fleishman, Stanley Fleishman appeared and motioned on the ground that Mr. Porter could not be pres-[fol. 80] ent because he needed to go to San Francisco to argue this case before the Circuit Court of Appeals on December 1st, 1950.

Q. And when was it continued to?

A. Until 9:30 a.m. December 14, 1950.

Q. And what happened on that date?

A. On that date a further hearing was held, pages 48 to

70, and on that date it was further continued on motion of counsel to 9:30 a.m. January 3rd, 1951.

Q. You say "on motion of counsel". Which counsel do you mean?

A. Motion of counsel Porter.

Q. And on January 3rd what happened?

A. On January 3rd a short hearing was held. Counsel appeared and motioned for a further continuance because the respondent hadn't had an opportunity to secure certain documents which would be of use in presenting his case.

He was granted a continuance to February 13, 1951 and notified that the date of February 13th, 14th and 15th were being set aside in order that the case might be terminated.

Mr. Porter: At this point on behalf of petitioner Carlson I would like to move to strike all of that testimony upon the ground it is incompetent, irrelevant and immaterial and doesn't tend to establish or disprove any issue in this proceeding.

[fol. 81] The Court: The motion is denied. That is all the questions I have to ask. Does counsel desire to ask any questions?

Mr. Binns: No questions from the Government, your Honor.

The Court: So far as Carlson is concerned have you any questions, Mr. Porter?

Mr. Porter: No, no questions, your Honor.

Mr. Binns: I might ask one question, your Honor.

The Court: Very well.

Mr. Binns: Was the Government ready to proceed on each of these dates, the Immigration Service?

The Witness: I was ready to proceed to hear it on each of the dates and the examining officer was present to proceed on each of those dates.

Mr. Binns: And were the defendants' witnesses present?

The Witness: There were not witnesses except Mr. Carlson.

Mr. Binns: That is all of the other Government witnesses testified?

The Witness: Mr. Carlson is the sole witness in the case.

The Court: And who was the other alien that you had?

The Witness: Mrs. Stevenson

By The Court:

Q. When was that first set?

A. Under the new warrant?

[fol. 82] Q. Yes.

A. It was set for November 30, 1950 at 9:30 a.m.

Q. What happened on that date?

A. On that date substitute counsel for Mrs. Rosenberg appeared, counsel Miss Esther Chandler and motioned for a continuance on the ground that Mrs. Rosenberg was enroute to San Francisco to argue the case before the Circuit Court of Appeals on a writ of habeas corpus.

Q. When was it continued to?

A. It was continued to 9:30 a.m. December 6, 1950.

Q. And what happened at that time?

A. At that time all parties present, counsel Rosenberg motioned for a further continuance That motion at that time was denied and the case was proceeded with. 37 pages of testimony were taken and on further motion of counsel she was granted a continuance until December 11, 1950.

Q. What happened on December 11th?

A. On December 11th counsel appeared, testimony was taken, pages 38 to 86, and the hearing was recessed on that date until 9:30 a.m. December 12, 1950.

Q. What happened on December 12?

A. On December 12 Mrs. Rosenberg called me on the phone and asked for a continuance because she needed to go to Beverly Hills to take a deposition.

I referred her to the District Directors and if he author-

[fol. 83] ized any continuance it would be granted. I believe she understood that a continuance was authorized and no hearing was heard on that day. However later that day, on the 12th, she called me and we set the date for December 14, 1950, I believe, at 2:00 p.m.

Q. What happened at that time?

A. We took further testimony in the case and the case was recessed at the close of business until 9:30 a.m. on December 15.

Q. On the 15th what happened?

A. On the 15th the hearing was resumed and at the close of business on that date, on motion of counsel due to another cause for deportation having been lodged, a continuance was granted counsel to assemble evidence to meet that cause

and also counsel wished to secure testimony previously given by Government witnesses in another case.

Q. When was it continued to?

A. It was continued to January 5, 1951, but it was taken off calendar to ascertain from the Commissioner as to whether or not the testimony she wished of the Government witness would be furnished her by the Government or in what way it might be furnished her.

Q. And it is now off calendar?

A. It is now off calendar pending hearing from the Commissioner.

[fol. 84] Q. Did you have anything to do with the hearing in the Carlisle matter?

A. No sir; David Hyun.

Q. Did you have David Hyun?

A. Yes, sir.

Q. When was that case originally set under the new warrant?

Mrs. Rosenberg: May I make a motion at this time, your Honor, if you included, to strike from the record all the testimony given in that case.

The Court: Yes, the motion is denied.

The Witness: That hearing was set for November 22nd, 1950 and was opened on that date.

By The Court:

Q. I believe there is no dispute in the Hyun matter —— that is, that it was continued at the request of the Government for the purpose of taking depositions, is that true?

A. That is true, yes, sir.

Q. There have been no delays at the request of counsel for the alien in that case?

A. No. In that case he made a motion for a continuance at the beginning of the hearing but that was denied.

Mr. Binns: We would like to complete the record in that matter, your Honor. It will only take a minute.

The Court: All right.

[fol. 85] By The Court:

Q. It was set for November 22nd?

A. Yes, sir.

Q. And then what happened?

A. 17 pages of testimony were taken and on motion of the examining officer to take depositions in Honolulu the case was continued and operations were set in motion to take the depositions as requested.

Q. And it has been hanging fire since then. Have you gotten the depositions?

A. Yes, sir; I understand that the depositions were taken on December 18.

Mr. Tyre: Just a moment. I will move to strike any testimony along those lines. That testimony is this gentleman's conclusion, your Honor.

The Court: All you know is that depositions were ordered.

The Witness: I have a telegram here that said they were mailed to San Francisco.

The Court: That is not evidence.

The Witness: Very well, sir.

By The Court:

Q. Was that information received by you in the ordinary course of business in your office?

A. Yes, sir.

Q. Addressed to you?

A. Yes, sir; this was furnished to me today.

Q. Has this case been set down for any further hearing?

[fol. 86] A. Not as yet. The depositions have not been received.

The Court: Do you wish to make the same motion to strike?

Mr. Tyre: I would like to ask a couple of questions.

The Court: Very well.

Cross examination.

By Mr. Tyre:

Q. You say that counsel moved for a continuance at the outset of the hearing on November 22nd? Do you recall the length of time for which counsel asked for the continuance, Mr. Bartos?

A. I have it here, counsel. Counsel asked for a short continuance.

Q. Do you recall counsel said that 10 days or two weeks would be an adequate time?

A. I believe that is correct.

Q. Do you remember whether or not the basis for the motion for continuance was to become acquainted with the regulations which had been issued shortly prior to that hearing by the department?

A. You said you simply had not had an opportunity to prepare for the case, to even study the warrant let alone the law.

Q. Do you recall also the statement that the regulations pertaining to that hearing had only been issued a few days [fol. 87] prior to that particular hearing and that counsel wished to become familiar with the regulations?

A. That is correct, counsel.

Mr. Tyre: That is all, your Honor.

The Court: That is all.

Q. By Mr. Binns: Do you know whether or not Mr. Tyre was notified of the depositions to be taken in the Hawaiian Islands?

A. I know ——

The Court: How would he know whether he was notified?

Mr. Tyre: I will object to that. No proper foundation has been laid.

Mr. Binns: I merely asked if he knew.

The Court: I assume as hearing officer he didn't have anything to do with the taking of the depositions, did you?

The Witness: No, I did not.

The Court: That is a matter that would be up to the Immigration officers themselves, their counsel or representative.

The Witness: That is right. I do know that there was a letter written by the District Director at Honolulu to the Commissioner stating the date that the depositions were to be taken and telling the commissioner that a letter had previously been sent airmail special delivery registered with a return receipt, directed to counsel and the alien [fol. 88] notifying them of the date that the depositions would be taken.

Mr. Tyre: I move to strike that response, your Honor, as not being responsive to any question before the witness

and on the further ground that it states a complete conclusion of the witness and no proper foundation.

The Court: That motion will be granted. Any further questions?

Mrs. Rosenberg: I would like to ask a few questions.

By Mrs. Rosenberg:

Q. Mr. Bartos, of the six dates set in the Stevenson hearing, is it not true that of those six two were requested by the hearing officer, one on December 11 and one on December 14?

A. I believe I said that—yes, that is correct. The 11th was recessed to the 12th and the——

Q. And the 14th recessed to the 15th?

A. And the 14th was recessed to the 15th. I believe I stated that. That is proper, Mrs. Rosenberg,—that is correct, Mrs. Rosenberg.

Q. And that one of the hearings set was upon Mr. Landon's suggestion communicated to you that the deportation hearings would be held in abeyance until the Circuit Court had ruled—that was with regard to the December 12th hearing, is that not so?

A. That may be something that Mr. Landon told you but Mr. Landon didn't get in touch with me as to that fact.

[fol. 89] Q. Did Mr. Landon call you, Mr. Bartos, on December 12 indicating to you that he had granted to me a continuance on the basis of the Circuit Court ruling which was expected very shortly?

A. No.

Q. Did you talk with Mr. Landon on December 12th with regard to the December 12th hearing in this case?

A. Yes; I called Mr. Landon.

Q. You called Mr. Landon?

A. Yes.

Q. And can you tell us the import of that conversation?

A. I asked what had gone on—that I had expected "to hear from you" or he and that I hadn't heard.

Q. Well, why did you expect to hear from him? On what basis did you have that expectation?

A. Because when you called me I recommended that you call him and I expected to hear from either one of you or the other as to whether you were going to appear.

Q. That is right. And didn't Mr. Landon get in touch with you at all or did you get in touch with him on that date?

A. I got in touch with Mr. Landon because so much time had gone by I wanted to know what was happened.

Q. I see. Did Mr. Landon tell you of any conversation he had had with me on that date?

A. Yes. He said that he had. I don't recall the exact [fol. 90] conversation but he said that he had agreed more or less to a continuance with you.

Q. So that of the six cases we have two recesses and one based on the conversations with Mr. Landon as to a continuance on that point?

A. Yes, but that was at your request because you had called me.

Q. That is right. I merely wanted to establish——

The Court: Let us not get into an argument.

By Mrs. Rosenberg:

Q. I merely wanted to establish the basis of it.

The Court: Don't argue.

By Mrs. Rosenberg:

Q. Mr. Bartos, is it true also that on December 15 when you granted the continuance it was on the basis of meeting the new charges, this continuance being one as a matter of right to the respondent?

A. That is right.

Q. So that of the six we have disposed of five in that fashion.

Mr. Binns: I object to that, your Honor, as argumentative. I will withdraw the objection.

The Court: We have to have a certain amount of argument.

Mrs. Rosenberg: That is all.

The Court: That is all. Call the other hearing officer.

[fol. 91] Roy Waddell, called as a witness by the Court, being first sworn, was examined and testified as follows:

The Clerk: State your full name.

The Witness: Roy Waddell.

Direct examination.

By the Court:

Q. Were you the hearing officer in the Carlisle matter?
A. Yes, sir.
Q. Under the new warrant?
A. Yes.
Q. When was that first set for hearing?
A. November 17, 1950 at 1:00 o'clock.

Mr. Fleishman: I am sorry but I can't hear the witness, your Honor.

The Court: It is strange that all you people went deaf on one day.

Mr. Fleishman: It is very difficult, if your Honor please.

The Court: Speak a little louder.

The Witness: November 27, 1950 at 1:00 o'clock.

By the Court:

Q. What happened on that day?

A. The hearing opened and Counsel Fleishman immediately moved for a continuance on the basis that he had not had an adequate response to a request for a bill of particulars; that he was not ready to proceed in view of a [fol. 92] lack of opportunity for sufficient consultation with his client, who was then at Terminal Island detention quarters, and on the further ground that an action had been brought in San Francisco testing the constitutionality of the McCarran Act and he desired to have the hearing continued awaiting the outcome of that action.

Q. When was it continued to?

A. Well, we proceeded through the balance of the day over his objection. It was continued to November 28, 1950 at 1:00 p.m.

Q. Simply a recess?

A. That is right, an adjournment or recess.

Q. And did you have further hearing on the 28th?

A. On the 28th at 1:00 o'clock we had a further hearing. Counsel again objected to being forced to proceed with the proceeding at that time and at the close of the day, having cross examined one Government witness, he announced that he was not ready to complete his cross examination and I

proposed that we continue the case until the 30th of November when the witness would again be available and Mr. Fleishman, the attorney, announced that he had a prior commitment in San Francisco on the first of December and that this date would conflict and therefore I adjourned without fixing a date.

Q. Has there been another date fixed?

A. Yes. The docket officer set it again for hearing [fol. 93] December 15, 1950 at 9:30.

Q. What happened at that time?

A. Counsel then requested a continuance on the ground that he was not adequately prepared to cross examine the witness; that his client was still in detention but we proceeded through the balance of that day.

Q. What happened after that?

A. And then we recessed until the following date, December 14, 1950, at 11:30 a.m. That was a very short session. Counsel indicated that he was unable to proceed further with the cross examination of the witness without transcripts of the testimony which the witness had given in two other deportation cases and the matter of making those transcripts available to him was taken under consideration by the District Director, and I was informed through official channels that counsel would be given further opportunity to cross examine the witness and therefore I adjourned the hearing again.

Q. To what date?

A. And fixed no date awaiting the availability of the transcript which he had requested.

Q. Any questions by counsel?

Mr. Fleishman: Yes, just a few.

Cross examination.

By Mr. Fleishman:

Q. Mr. Waddell, do you recall the hearing of December [fol. 94] 14th which was the last hearing we had?

A. Yes.

Q. That was a carry-over from the hearing of December 13, was it not?

A. That is correct.

Q. And do you remember on December 13 when we finished at the end of the day you declared that we would have just a morning session on December 14th?

A. I don't recall that, Mr. Fleishman.

Q. Do you have before you the proceedings of December 13th?

A. I have a part of the transcript. I don't know how far that went.

Q. If you will just look at the last page of the December 13th hearing I think you will find that that is discussed there.

A. No, it is not. It does not carry through the 13th.

Q. You do not have up to the 13th?

A. No.

Q. I will ask you now if I have refreshed your recollection when I ask you if you now recall that on December 13th, at the end of the day, you said that on December 14th we would have just a morning session. Do you remember that?

[fol. 95] A. No, I don't recall that but it is possible.

Q. Do you remember we were supposed to start that day at 10:00 o'clock on December 14?

A. No, I do not recall that.

Q. Don't you remember when I came in I asked you why we weren't commencing on time and you told me that Mr. Leach was otherwise occupied?

A. Oh, yes, I believe the witness was involved in several actions. Now I remember, Mr. Fleishman, yes.

Q. Mr. Leach was testifying in two cases at the same time, isn't that correct?

A. That is right; there was a short delay.

Q. And you knew as a matter of fact that Mr. Leach was going to be occupied in the afternoon of the 14th and that was why we couldn't go on all day on the 14th of December?

A. I believe that is correct.

Q. So when the session ended on December 14th at 1:00 o'clock, which was at noon, that was all the time you had set aside for that session, isn't that correct?

A. I don't recall, Mr. Fleishman.

Q. Don't you remember, Mr. Waddell, that as a matter of fact I said that I was prepared to go on for the rest of the day but we had arranged—that I had questions to go

on with further cross examination, but we had previously arranged it was going to be a half-day session and then the [fol. 96] half day was over and we therefore adjourned?

A. I recall one day.

Q. I am talking now about December 14 which was our last session, Mr. Waddell. Don't you remember that?

A. No. I remember it was a very brief session. That is the extent of my recollection.

The Court: You wouldn't say that isn't true?

The Witness: No, I wouldn't say it isn't true.

Mr. Fleishman: I think that is all.

The Court: That is all.

I find from the affidavits and the return that there was sufficient evidence before the Attorney General upon which he could exercise his discretion and that having exercisd that discretion the burden now shifts to the aliens and petitioners herein, to establish by competent evidence the allegations of their petitions wherein they state in effect that the action of the Attorney General in retaining them in custody was arbitrary and capricious.

I want each of the petitioners herein and each of the aliens to have an opportunity to express themselves, and I am offering each of the aliens an opportunity to take the stand in their own behalf.

Mr. Porter, do you desire to offer any evidence on behalf of the petitioner Frank Carlson?

Mr. Porter: If your Honor please, our position in the [fol. 97] Carlson case is that the showing by the respondent District Director is insufficient as a matter of law to justify the detention and as a consequence the allegations of the petitioner established an abuse of discretion and we think there is no issue as to which it is necessary or proper for us to go forward with evidence in the Carlson case.

We are prepared to submit on the present state of the record.

The Court: I am going to call Mr. Carlson to the witness stand. Mr. Carlson.

Mr. Porter: I want to object to the action of the court in calling the petitioner to the stand in the face of the statement which I have just made with respect to our position in the case and object to the propounding by the court of questions to the petitioner upon that ground.

The Court: Well, the petitioner does not have to testify but I don't want it said that I haven't given him a full opportunity for a hearing in this court. In view of the allegations I don't want it said that I have denied him an opportunity to be heard and I will ask you, Mr. Carlson, without being sworn, do you abide by the statement of your counsel?

Petitioner Carlson: I would like to accept the advice of my counsel at this time.

The Court: You would like to what?

Petitioner Carlson: I am accepting the advice of my [fol. 98] counsel and decline to testify at this time.

The Court: All right, that is all.

Mrs. Rosenberg, do you take the same position that Mr. Porter does?

Mrs. Rosenberg: Yes, your Honor, I do. The petitioner here has set forth facts which have been undenied. The affidavit and the return of the Government has not shown any fact, your Honor, which was a mandate from the Circuit Court, a fact upon which the Government could rely to detain without bail.

The Court: I would like to call Mrs. Stevenson as a witness and I will give her an opportunity to testify if she so desires.

I would like for her to step forward because I want her to know what her attitude is.

You know the other day there was a question raised with reference to the fixing of bail and unless I know more about these people I am not in position to fix bail.

Mrs. Rosenberg: With regard to the question of bail, your Honor——

The Court: I am not going to argue that point.

Mrs. Rosenberg: At the proper time I should like an opportunity to argue it.

The Court: I want to ask Mrs. Stevenson if she desires to take the witness stand or does she wish to take the posi- [fol. 99] tion that counsel has suggested.

Mrs. Rosenberg: I shall so advise her. It will be up to Mrs. Stevenson.

Petitioner Stevenson: I would like to take the advice of counsel.

The Court: Very well.

Mr. Fleishman, what is your position?

Mr. Fleishman: I take the same position that Mr. Porter stated, your Honor.

The Court: And Mr. Carlisle, do you desire to take the witness stand in your own behalf?

Petitioner Carlisle: I desire to abide by advice of counsel.

The Court: Mr. Tyre.

Mr. Tyre: Your Honor, I would like first, before answering your question if I may, to make a motion so that the record is clear.

I believe at one of the previous hearings Mr. Binns indicated that he wished to file a supplemental return and Mr. Porter and Mrs. Rosenberg and Mr. Fleishman each objected to the filing of such a return.

I think the record will indicate that the court had stated its position on that pretty well and that any further objections to the filing of the return——

The Court: In other words you want your record protected?

[fol. 100] Mr. Tyre: I want the record to show that I object to the filing of a supplemental return on these grounds: One, that in a return to a writ of habeas corpus it is the duty of the Government to file whatever facts it has at hand and wishes to allege in that original return; that a hearing on a return on a writ of habeas corpus is by its nature a summary proceeding and should be disposed of as rapidly as possible. I am also aware of the fact that your Honor desires to give each of the petitioners an opportunity to be heard. However, I do believe nevertheless, that in a writ of habeas corpus matter, especially a matter of this type where Mr. Hyun has been in jail as long as he has, that it was incumbent on the Government to file whatever it had in its original return.

The second ground is that the petitioner stated at the morning session on that day before the traverse was filed just what the traverse would contain, namely, a re-allegation of the allegations of the original petition for the writ, so that no one would be taken by surprise, and that afternoon when we came back Mr. Binns again asked that because of the nature of this traverse he wished to give the matter further consideration and if necessary to file a further return, which I think was inconsistent with the

morning's session since he had already been apprised of what the traverse was to contain at this time, therefore, I [fol. 101] wish to make the motion that the supplemental return in this case be stricken.

The Court: The motion will be denied.

Mr. Tyre: I wonder if I might now then, your Honor, have a few minutes of a recess to discuss the problems imposed in view of your Honor's ruling on my motion?

The Court: Yes, I will take a five-minute recess.

(Short recess)

The Court: You may proceed.

Mr. Tyre: I have discussed the matter with David Hyun and he asked me to take the position that he does not wish to testify.

The Court: He does not?

Mr. Tyre: He does not.

The Court: Mr. Hyun, is that your wish?

Petitioner Hyun: Yes, I do not want to testify at the present time.

The Court: You understand I am giving you an opportunity to testify if you wish?

Petitioner Hyun: Yes, I do.

The Court: And I understand counsel for the petitioners have no evidence to submit to the court? They are going to rest entirely on the record presented by the Government's return and affidavit?

Mr. Porter: That is correct, your Honor, together with our demurrers thereto and other objections in the record. [fol. 102] The Court: The court has heretofore indicated that it feels the Attorney General has made sufficient showing as a basis for the exercise of discretion, and that the burden shifts to the aliens to establish by clear and convincing evidence that the acts of the Attorney General or his authorized representatives, have been arbitrary and capricious.

The petitioners declining to offer any evidence the court finds they are not entitled to a petition for a writ of habeas corpus and directs the United States Attorney to prepare the necessary findings to the effect that I find there has been no abs*ue* of discretion by the Attorney General or his representatives, and on the basis of that finding the peti-

tions for writs of habeas corpus are denied and the writs discharged.

Mr. Porter: If your Honor please, we intend, of course, —that is in the Carlson case, to file notice of appeal at once and we will desire to make application for bail pending appeal to your Honor.

I have an idea that such applications may be made in other cases. I wondered if your Honor would hear such applications now?

The Court: Yes, and I will give you my answer now.

I will not grant bail in any of these cases. I have given each one of the aliens an opportunity to take the stand and I have nothing before me to indicate that they do not present anything but a clear and present danger to the security [fol. 103] of the United States.

In view of that and in view of the fact that they have shown no evidence to the contrary or produced any evidence to the contrary, I feel they should not be at large and I will give you an order to that effect after you file your notice of appeal.

Mr. Fleishman: If your Honor please, in the Carlisle case there is also the question of his health. I have two affidavits, one from Mr. Carlisle's doctor indicating that Mr. Carlisle in the past had tuberculosis and that he was supposed to be put on—was supposed to have a high caloric diet, which diet is set forth in Dr. Lavit's (phonetic) affidavit.

Also Dr. Lavit, having been informed by me that Mr. Carlisle has had a continuous cough for the past six weeks, informed me and then put in his affidavit the fact that this indicated a general weakening of the condition of Mr. Carlisle, which might very well lead to a new on-set of tuberculosis or again using his words, "might even indicate that he already does have it."

I also called to the doctor's attention the fact that Mr. Carlisle has lost five pounds since he was in custody and the doctor again said that that would indicate a general weakening of his condition which may lead to a new on-set of tuberculosis if it already has not come on.

[fol. 104] Now, I have also prepared an affidavit of my own based upon information given to me by Mr. Carlisle, setting forth, first, that he has lost five pounds since he has

been taken in custody; secondly, that he has had a cough continuously for the last six week and, third, I have set forth the diet that he has been getting at Terminal Island showing a wide discrepancy between—gap between what he is getting and what the doctor said he should get in order to prevent an on-set again of tuberculosis.

So that on the basis of Mr. Carlisle's health at this point I would most respectfully request bail pending appeal at least.

Mr. Binns: Your Honor, I have here a letter from Dr. F. C. Stewart, the medical officer in charge of the Federal Security Public Health Service in San Pedro who examined Mr. Carlisle, and the letter is dated January 8.

Dr. Stewart states in the letter:

> "There is no medical evidence to indicate any special diet or unusual precaution to prevent a recurrence of alleged chest pathology while detained."

The Court: Now, counsel, I have the authority to employ a doctor but I am willing to have these facts submitted to an independent doctor whom I will name——

Mr. Binns: We have no objection that at all.

The Court: And if that doctor feels that confinement is [fol. 105] injurious to the petitioner's health and we can have some assurance that his activities during the appeal will be such that he will not be detrimental to the country during the period I will be glad to consider it.

Mr. Fleishman: The petitioner of course is most anxious to have independent medical examiner examine him with reference to whether his confinement is injurious or not.

The Court: What is that?

Mr. Fleishman: The petitioner would be very anxious to have an independent medical examiner appointed by the court.

The Court: In other words, here you have a doctor on one side and another doctor on the other side and as usual one says his health will be improved by confinement and the other says it will be injurious. But if confinement is injurious to this man's health and I can be given some kind of assurance that his activities during the appeal will not be detrimental to the welfare of the country I will be glad to consider his release on bail.

I haven't any doctor in mind. I will have to find somebody who is a specialist along that line to make the examination.

Mr. Binns: The petitioner will, of course, pay the doctor fees?

Mr. Fleishman: Not the petitioner's attorney.

[fol. 106] Mr. Tyre: Yes, sure.

Mr. Binns: And we are also, your Honor, in a position to provide any special foods he might need if that would be brought to our attention.

The Court: I think that letter and your affidavit should be filed.

I will take Mr. Carlisle's application for bail under submission until we can work out the health problem.

I am willing if counsel can agree on a specialist, Government counsel and Mr. Fleishman, can agree on some specialist, to make an examination and take his history and determine what diet he is getting and whether it is detrimental to his health.

Mrs. Rosenberg: Your Honor, I wonder if I might address myself to the point of the release of the petitioner Stevenson on bail pending the appeal because of undue hardship, not alone to her but to relatives involved, particularly her mother who is past 70 years of age and who is in a very nervous condition and agitated condition, which has naturally been aggravated by this particular proceeding and Mrs. Stevenson is her only relative in this country, all others being abroad in distant places, and that she relies greatly on Mrs. Stevenson for the normal comfort and happiness that children afford, and further that she has a son who is now at college, who is working his way through [fol. 107] school and Mrs. Stevenson, the petitioner herein, has aided him financially.

In addition this son has been subjected to attacks of undulant fever since a very early age, 14 I believe, and has just recently had a recurring attack and has been subjected to a great deal of concern over this matter and the actual physical comfort that the petitioner could provide him.

In addition, of course, your Honor, you know that Mrs. Stevenson is married and her husband has been obliged to carry on and do all the housework and attend to the home making and that for these reasons as well as the undue

hardship to Mrs. Stevenson, we respectfully urge that the court release Mrs. Stevenson on bail pending the appeal.

I have, your Honor, an affidavit prepared which sets forth these facts more fully. I should like to submit it.

The Court: You may submit them. Personally I would like to release all of them pending appeal but I know on the other hand that this appeal will be more expeditiously handled if the defendants are confined than if they are at liberty. The last appeal was the fastest appeal I ever heard of in this court. It took only about 60 days.

Mr. Binns: Much less than that, your Honor.

The Court: I mean between the time—approximately 60 days, was it not?

If these defendants had been on bail there wouldn't even be filed the opening briefs.

[fol. 108] Mrs. Rosenberg: I assure your Honor if the petitioner is released pending the appeal we will move as expeditiously as possible. We are anxious also to have the matter concluded.

Mr. Porter: I would like to say for my part, your Honor, that I take respectful exception to your Honor's implication that I, at least as counsel, would not further the appeal merely because my client was enlarged on bail.

The Court: Let me stop you right there, counsel. Just a moment. There was never an attorney in his life who represented somebody that was released on bail that hurried up an appeal, whether it be you or somebody else. As long as they are out on bail and there has been no hearing what is the hurry? You do it and you would do it again and if I were practicing law I would do the same thing. I wouldn't break my neck to have the appeal heard. You are just acting normally, that is all, just as any attorney does and as long as a man is not in jail there is always the hope that something will happen so that he will not have to go to jail. That is one of the things that the courts are constantly confronted with. It is the same proposition with a person who is charged with a public offense. They never want to go to trial. The longer they can put it off the better. That is the usual practice. There is no particular reflection upon you. It is just the way things go.

[fol. 109] Mr. Porter: I want to say that I think that is not a question upon which the court should rest a decision with respect to the granting or denial of bail.

The Court: I am not denying bail on that ground. If the charges here were something other than a charge involving national security there wouldn't be any question about it. If that issue was not present there would be no question about it. But on the other hand you are asking me to release people whom the Attorney General has in effect charged are a threat to our national security and present a clear and present danger to the security of this country. You are asking me to turn them loose. That is the difficulty of my position. If this were a charge of nearly anything else the court wouldn't hesitate to release them. But you have taken the position:

> "Well, the Government has to come in and show its hand; we are going to stand on our rights and we are not going to show our hand. We are not going to make any attempt to prove that the Attorney General acted arbitrarily or capriciously, as you have alleged in your petitions. You want to stand on your rights."

Possibly if I had all the facts in the case I might hold the Attorney General was arbitrary but you want to test it out this way and consequently your clients are having to [fol. 110] suffer the penalty of your method of disposing of this matter. In the meantime you are not going to jail but your clients are.

Mr. Porter: And I am suggesting to your Honor that if that is your Honor's view, your Honor should release the clients from paying this penalty for being represented by counsel who take that position.

The Court: I have asked each one of them and they are perfectly satisfied with their counsel. I am not criticizing counsel for the theory they have adopted in the trial of this case. That is their privilege; but at the same time I have nothing before me upon which I could make a finding that the Attorney General or his authorized representatives acted either arbitrarily or capriciously.

Mr. Porter: That is not the question on the application for bail pending appeal, and I want to say this, unless your Honor is completely free from doubt as to the correctness of your Honor's ruling in this matter, then I submit that the applications for bail should be entertained and I don't honestly believe that your Honor is so completely free from

doubt in this matter. I think your Honor will agree with me that the questions raised here are important and serious and difficult questions. And I think that your Honor has already indicated that he recognizes that a reasonable man or reasonable attorney, if there is such a thing, can and [fol. 111] could take the position that I have taken here.

Now if that be the case then I submit your Honor is actually saying there is a question here—a question of law here and that is the question, as I understand it, considering an application for bail pending appeal.

The Court: And that is a matter of discretion with the court.

I will say this, that I never made a decision in my life where I was absolutely certain of the correctness of it and I don't pretend that my decisions are correct. In fact as in this case, it is demonstrated that I can very easily be in error and I may be in error again but at the same time in the exercise of discretion, when it comes to the question of a person's liberty and a question of national security, I am going to rule in favor of national security. That is just where you and I differ.

I believe if conditions were reversed and you were in my position and you were not a partisan in this proceeding, you would probably do the same thing.

Mr. Porter: Your Honor, if I felt that a reasonable man could conclude that the petitioners Stevenson or Carlson or any one of them could or would do anything pending the appeal which would be inimical to the security of the United States I would understand your Honor's position.

The Court: I don't know about that.

Mr. Porter: But I don't think a reasonable man can take [fol. 112] that position, your Honor.

The Court: I don't know because there has been no evidence submitted to me.

Mr. Porter: There has been no evidence submitted by the Government to support its conclusions, not a whit of evidence.

The Court: I think there is sufficient upon which to comply with the Circuit Court's opinion and they have recognized the Potash decision. They have cited it with approval. You may take this up with them. They may release them. They may if they want to. They may release

them if they want to exercise that discretion. It is their country just the same as it is mine and yours. If they feel in view of these affidavits that they want to exercise their discretion and release these people they may do so.

Mr. Porter: We are talking now about bail pending appeal.

The Court: I know, they can also release them pending appeal.

Mr. Porter: No, they can't, your Honor. I am afraid I have to disagree with your Honor. The rule is very clear, unfortunately, that where the appeal is by the petitioner from an order denying a petition or discharging the writ only the trial court or the district court has the power to grant bail pending appeal.

The Court: I am not so sure about that. I understood that if I didn't grant bail the Circuit Court could and the [fol. 113] immigration officers would recognize that order.

Mr. Porter: I am afraid that is not the case.

Mr. Tyre: I don't want Mr. Porter's discussion of the law binding upon me. I think that is the rule but I am not too sure of it.

The Court: I remember at one hearing I asked Mr. Del Guercio about that. He probably has had more experience on immigration matters than any of us and I think that is the information he gave me at that time.

Mr. Del Guercio: I stated the matter of granting bail was in the discretion of this trial court.

The Court: Not in the Circuit Court?

Mr. Del Guercio: The trial court, yes.

The Court: The trial court only?

Mr. Del Guercio: I don't know about that.

Mr. Fleishman: I would like to make one comment with regard to one of your Honor's remarks, and that is going along with all the major premises, I would like to call to your Honor's attention what I am sure you already know, and that is that in some 42 cases which started out at the same time the aliens have been out for a long period of time without any horrendous effect upon the country.

We have a serious question as we all know. It is going to be litigated and it should be settled and there is conceivable reason that I can see why these four alone, with [fol. 114] perhaps one or two other exceptions, should be

held for this long period of time, whereas the other 42, some of whom could very easily be considered far more of a threat since they are on the executive council and the national committee of the Communist Party—I am referring to some of the cases in New York where 16 were released sometime ago, as your Honor knows.

I have my theory of the law. I think we are right and that is why we are taking this position. We may be wrong and if we are wrong then the penalty should be suffered.

But other than that I think this is—at least in the case of Carlisle whose situation I am most familiar with, a great and grave miscarriage of justice will be had to hold this defendant indefinitely pending the determination of this most serious legal question, again with the background that we have of some 50 cases starting out together on exactly the same legal theory, 42 of whom are out now and as I commented before there has been no ill effect flowing from it.

The Government, I presume, has kept careful tabs on these persons and had they tried anything they would have been apprehended under the law; and again there is no difference at all between those cases where they have been free now practically for the entire period of time and these cases where they have been incarcerated continuously for, well, now, three months.

The Court: Counsel, that is what brought forth the com- [fol. 115] ment I made the other day, that I questioned very seriously the ability of the courts to protect this country in the event of a threat to our internal security. The law to me is clear and I am only trying to follow the law as I understand it. Other judges have understood the law differently.

You must remember that since the arrest of these petitioners the climate has changed considerably. There is nearly as much difference in the climate of yesterday afternoon against that of this afternoon.

Since this occurred we are in what, diplomatically, they call war. The diplomats say it isn't war but we are as a matter of fact in war. There has been a national emergency declared and if our courts are going to release people who belong to that same conspiracy or conspiratorial group that is trying to overthrow the world and conquer the world

then they are going to destroy themselves, but I am not going to commit suicide if I can help it or be a party to it.

Mr. Fleishman: If your Honor please, there is a serious legal question and certainly if the Circuit Court says they should be free I am sure your Honor would abide thereby.

The Court: If they direct me to release these petitioners I will abide by their mandate. There is no question about that. And as far as the three judges are concerned I have absolute confidence in their integrity and their loyalty and their ability, but whether I did or not it would still be my [fol. 116] duty to comply with their mandate and I believe I have done that.

Mr. Fleishman: I am not urging that your Honor change the decision that you have rendered. I am not suggesting that you reverse yourself, but there is a question or was a question, two sessions ago in which your Honor indicated that he then thought that the affidavits were insufficient, at least as to three persons, including Mr. Carlisle.

The Court: But that was before I fully understand the Circuit Court's decision.

Mr. Fleishman: I am not quarreling with that. I am saying that it is a difference of opinion. Your Honor himself has gone through a change, which is legitimate, but we have here again a serious question of law and we don't think we are wrong about it.

The Court: Well, there is always the possibility of the reviewing court holding somebody to be wrong. There is no such thing as being absolutely certain about anything; but as I stated before in view of the nature of the charges in this case and that the Attorney General has claimed they are security risks, I am not going to grant them bail until the Circuit Court advises me to. As to the question of one of the petitioner's health I am taking that under submission.

Mr. Fleishman: May I say this, if your Honor please, and then I will stop. But if there were such great risk [fol. 117] throughout the country the Attorney General had the right to appeal in those cases where the aliens were let loose by district judges.

The Court: I don't know what happened in the other cases and I don't know why the Attorney General in this case didn't take it up and settle the law from this opinion,

but apparently he didn't want to do it on account of the condition of the pleadings.

That has been eliminated and it will give them an opportunity, if the Circuit Court ordered these people released, to take it to the Supreme Court.

Mr. Fleishman: It seems very, very wrong that a person should languish in jail when there is a serious question pending appeal.

The Court: Counsel, you don't get my point of view and that is this. When there is a claim, and I don't know whether it is true or not, a charge hereby the Attorney General that these people are security risks and that their release is dangerous to the security of the United States, until that is either disproved or proved I am not going to release them. My first vote in that respect is for the security of the country.

We have had 42,000 casualties already. These people are better off in custody than those boys over there are. These people are at least safe while the casualties are among the [fol. 118] boys over in Korea who are not only compelled to go over there and fight but are also risking their lives to do it.

I will take the one case under submission, the Carlisle case, and I wish counsel would confer and see if they can agree on some medical doctor or specialist in tuberculosis to examine this petitioner and make a report to the court in that case.

Mr. Fleishman: I have a suggestion now, an independent medical examiner from the State Workmens Compensation Board. Perhaps that would be a good suggestion.

The Court: Suppose you and counsel discuss it. If you can't agree I will find somebody to do it for you.

(Whereupon, at 3:30 o'clock p.m. the above entitled matter was concluded.)

[fol. 119] Reporter's Certificate to foregoing transcript omitted in printing.

[fol. 120]. UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 12742.

FRANK CARLSON, also known as Solomon Skolnick, Appellant,

vs.

HERMAN R. LANDON, District Director of the Immigration and Naturalization Service, United States Department of Justice, Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

PROCEEDINGS HAD IN THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT
(Upon appeal from

Order of District Court of Jan. 22, 1951.)

[fol. 121] UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Before: STEPHENS, HEALY and BONE, Circuit Judges.

ORDER OF SUBMISSION—Jan. 30, 1951

ORDERED appeals herein argued by Mr. John W. Porter, Mrs. Rose S. Rosenberg, Mr. Stanley Fleishman and Mr. Ben Margolis, counsel for appellants, and by Mr. Walter S. Binns, Assistant United States Attorney, counsel for appellee, and submitted to the court for consideration and decision, with leave to National Lawyers Guild, Los Angeles, and Hollywood-Beverly Hills Chapters, to file brief as amicus curiae.

[fol. 122] UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Before: STEPHENS, HEALY and BONE, Circuit Judges.

ORDER DIRECTING FILING OF OPINION AND FILING AND RECORDING OF JUDGMENTS—March 13, 1951

ORDERED that the typewritten opinion this day rendered by this court in above causes be forthwith filed by the clerk, and that a judgment be filed in each cause and recorded in the minutes of this court in accordance with the opinion rendered.

[fol. 123] UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 12,742

FRANK CARLSON, also known as SOLOMON SKOLNICK, Appellant,

vs.

HERMAN R. LANDON, District Director of Immigration and Naturalization Service, United States Department of Justice, Appellee.

No. 12,743

MIRIAM CHRISTINE STEVENSON, formerly BURROUGHS, nee KENKEL, alias MIKI ASHTON, Appellant,

vs.

HERMAN R. LANDON, District Director of Immigration and Naturalization Service, United States Department of Justice, Appellee.

No. 12,744

DAVID HYUN, Appellant,

vs.

HERMAN R. LANDON, District Director of Immigration and Naturalization Service, United States Department of Justice, Appellee.

No. 12,745

HARRY CARLISLE, also known as HARRY CARLYLE, Appellant,

vs.

HERMAN R. LANDON, District Director of Immigration and Naturalization Service, United States Department of Justice, Appellee.

OPINION—March 13, 1951

Appeals from the United States District Court for the Southern District of California, Central Division

[fol. 124] *Frank Carlson et al. vs.*

Before Stephens, Healey and Bone, Circuit Judges

STEPHENS, Circuit Judge

The above entitled proceedings in habeas corpus are here upon a second appeal after remand with instructions. The appellant-petitioners, all aliens, are being held by the local

Director of Immigration (Landon) upon instructions from the Attorney General[1] of the United States, pending hearing upon warrants of arrest and for deportation under the Act of October 16, 1918, as amended by the Internal Security Act of 1950 (ch. 1024, Pub. Law 831). Petitioners separately demanded their release through petitions for the issuance of the writ of habeas corpus, and the district court dismissed the proceedings upon a show cause order.[2] We reversed and remanded.

In our opinion in the *Carlson* case, No. 12742, 186 F 2d 183 (1950), we discussed the law which we deemed applicable to all of the cases and held (1) in accordance with the district court that the provision of the 1950 amendment to the Act of October 16, 1918, which refers to the release of aliens under arrest for deportation pending a hearing, requires the exercise of discretion on the part of the Attorney General in providing for release of the arrestee under bail or his detention without bail (Sec. 23), and (2) not in accordance with the district court that in a habeas corpus proceeding for release of the arrestee under bail, where detention without bail has been ordered, and petitioner had alleged in his petition that he was a law abiding person of a substantial character and that he would attend all hearings and was not a security risk, some fact upon which the discretion denying release on bail was based must be revealed by the Attorney General showing that such order was the result of a reasoned conclusion from relevant facts. The Attorney-General's discretion mentioned refers, of course, to discretion exercised or to be exercised upon the question [fol. 125] as to whether the release of appellants on bail would likely endanger the security of the United States and whether they likely would fail to present themselves at the deportation hearings.

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[1] The opinion occasionally refers to the Attorney General where the statute places the authority with him, even though this authority may have been delegated to the Commissioner of Immigration and Naturalization. See Title 8 U.S.C.A. § 156, as amended by the Act of September 23, 1950, c. 1024, Title I, § 23, 64 Stat.

[2] The hearing was upon the show cause order but under stipulation of the parties it was deemed that the writ had issued and the judgment conformed.

We reversed because no such revelation had been made, and remanded for further hearing. The district court complied, issued the writ, and return and supplemental return was made and traversed.

The district court, upon the original hearing, had adhered strictly to the theory that since the return to each petition showed regularity on its face the burden was upon the petitioner to go forward to prove the illegality of the restraint. Each appellant had set out facts in his petition and traverse personal to himself and his family status, as above indicated, which remained undenied, and relied upon the undenied portions of the petition and traverse and gave no oral evidence or further documentary evidence. Each appellant also alleged that his release under bail would not endanger the security of the United States and that the hearings would stretch over many months before being concluded, which latter allegations were put in issue.

At the resumed hearing and after the issuance of the writ, the Director filed his return and amended return, annexing in Carlson's case to the latter an affidavit stating certain facts, most of which were undenied, and the Director relied upon the undenied portions of his returns and affidavit as proof that the Attorney General had properly exercised his discretion in denying bail as to each arrestee. The district court then gave every possible opportunity to the Director and to each arrestee to go forward with evidence, and all refrained. The court then denied each petition and dismissed the writ as to each, and remanded each arrestee to the custody of the Director.

Without restatement thereof, we adhere to our former *Carlson* opinion (186 F. 2d 183 (1950)), and now proceed to the key question:

> Was the district court in error in concluding that the affidavits, together with the undenied portions of the pleadings, failed to show that appellants' restraint was illegal?

[fol. 126] We shall proceed to state briefly the revealed facts as they stood at the conclusion of the resumed hearing. Although the petitions for the writ of habeas corpus were not filed by the arrestees but on their behalf by their attorneys, we shall occasionally refer to them as "petitioners" or as "appellants".

The Appeal of Carlson

Appellant was arrested in 1947 on a so-called alien deportation warrant (Immigration Act of October 16, 1918) and therein was charged with being an alien who, after entry, was found to be *a member of an organization* which believes in and advocates violence to overthrow the government of the United States. He was enlarged under bail. Because of the *Sung* v. *McGrath* (339 U.S. 33 (1950)) decision, and after hearing sessions had been held, another charge was made by the issuance of a warrant under the amendment to the Immigration Act, the Internal Security Act of 1950. The 1950 amendment authorized (and the new warrant conformed) the deportation of an alien who *was, after entry, a member of the Communist Party* of the United States, as distinguished from the former statute which authorized deportation of an alien who *is a member of an organization* advocating overthrow of the government of the United States by force and violence.[3] The latest warrant provided that appellant should be held without enlargement on bail. These proceedings stem from the latter warrant.

It is alleged in the petition that Carlson was born in Poland in 1913 and entered this country at the age of 6 years, has lived in California for the last 15 years, and prior to deportation proceedings had filed his application for citizenship; he is married and is the father of two California-born minor children; there is no basis for fearing that he will commit any act detrimental to the United States should he be freed on bail; the deportation proceedings are liable to continue for many months; he will hold himself in readiness to appear at hearings on the warrant, and he has responded at all hearings on the warrant of 1947 while at liberty under bail.

[fol. 127] The Director's return to the order to show cause and which was prior to the remand, contained allegations: That Frank Carlson was not being illegally restrained of his liberty; he was in custody pursuant to a warrant of arrest dated October 31, 1950, issued under authority of the

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[3] Compare Title 8 U.S.C.A. § 137, as amended by the Act of September 23, 1950, c. 1024, Title I, § 22, 64 Stat. .....; with Title 8 U.S.C.A. § 137, as amended by the Act of June 28, 1940, c. 439, Title II, § 23, 54 Stat. 673.

Attorney General, directing that petitioner be taken into custody and granted a hearing to enable him to show cause why he should not be deported in conformity with law; that there was reasonable cause to believe that if he were enlarged on bail he would engage in activities prejudicial to the interest and safety of the United States.

After the remand the court issued the writ, and in the return thereto it is alleged in substance: That Carlson is restrained of his liberty in respondent's custody under proper and lawful authority; that he is a native and national of Poland, born at Kosow, Galicia, Poland, on or about March 6, 1913 that a warrant for the said petitioner's arrest was issued on October 28, 1947, charging that he was subject to deportation under the Act of October 16, 1918, as amended (8 U.S.C. § 137); that he was taken into custody on the warrant of November 3, 1947, and on November 5, 1947, was released on furnishing bail; that hearings were conducted; that the record was returned for hearings de novo because of *Sung* v. *McGrath*, 339 U.S. 33 (1950); that on September 26, 1950, the Commissioner in charge of Immigration in Washington, D. C., under the Attorney General, requested a report on all aliens in the Los Angeles district who were *currently* active members of the *Communist Party;* that on October 6, 1950, the Director submitted the report containing summaries of facts as reflected in the confidential and official records of the Government at Los Angeles in the cases of eleven aliens indicated to be currently active members of the Communist Party, and in the cases of eight aliens indicated to be past members of the Communist Party, which report recited facts tending to establish that Carlson was one of the eleven currently active members of the Communist Party; that on October 21, 1950, instructions were received by the Director from the Attorney General directing the immediate apprehension and detention of Carlson; this direction was conformed to on the 21st of October, 1950; that on October 27, 1950, the radiogram set out in the margin was received by the Direc- [fol. 128] tor in Los Angeles from the Attorney General[4];

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[4] Radiogram: "For your information and that of United States attorneys and aliens and their attorneys the instruction to you of October twenty first to take into custody and

that a new warrant of arrest was issued October 31, 1950, superseding the warrant of 1947 [hereinbefore mentioned]; that attached to the return is Exhibit "B" consisting of an amended affidavit of the Director. We hereinafter detail the attached exhibit and affidavit. It is alleged that the Attorney General has carefully considered facts which in his judgment establish that the said petitioner is a currently active member of the Communist Party engaged in the execution of the program of the Communist Party, the central purpose of which is to subvert the existing government of the United States indirectly by espionage and sabotage and directly by force and violence and to substitute a totalitarian dictatorship committed to the destruction of individual liberty and private property; and that, moreover, said facts cause the said Acting Commissioner (Attorney General) to believe that if the said petitioner were enlarged on bail he would engage in activities which would be prejudicial to the public interest, and would endanger the welfare and safety of the United States.

The Director's affidavit referred to states in substance: That he is custodian of the records of the United States [fol. 129] Immigration and Naturalization Service in Los Angeles district; that with respect to Frank Carlson, the petitioner herein, the Service is in possession of evidence showing that said petitioner has been and still is a member of the Communist Party of the United States and has

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detain the alien Communists was issued only after the cases had been examined in the light of the Internal Security Act of nineteen fifty and the spirit and intention thereof and all of the factors concerning the likelihood of the deportability and the activities of said alien had been given careful consideration as well as the factors of undue hardship which continued detention might impose stop as you have already been instructed the hearings and steps towards disposition of these cases are to be given top priority stop also as you have been advised these aliens were ordered detained by authority of the Attorney General delegated to me by Section nine zero point one of Title eight CFR paren twelve fr five zero seven two July thirty one nineteen forty seven paren under section thirty seven of the Alien Registration Act of nineteen forty comma eight USC four five eight."

and is actively participating in the execution of its program for a world-wide revolution and the establishment of a Communist totalitarian dictatorship in the countries throughout the world; more specifically, that said petitioner has admitted membership in the Young Communist League, a Subsidiary, Branch, and Affiliate of the Communist Party of the United States; that petitioner is an admitted member of the Communist Party of the United States of America having joined it about 1932; that petitioner was editor of the "Young Worker", official organ of the Young Communist League of the United States of America; that he was a member of the National Executive Committee of the Young Communist League; that he was the secretary and president of the Young Communist League of California; that in 1945 he admitted membership in the Communist Party and stated that he believed in its program and that he had been an active member thereof for fifteen years; that during the latter part of 1946 until about the summer of 1947 the petitioner was state secretary of the Communist Party of the United States for the State of Wisconsin; that in 1949 petitioner caused to be published in "Our Times" (a weekend supplement of the "Daily People's World", West Coast organ of the Communist Party) an article entitled "I Demand Citizenship" in which he stated that he was a member of the Communist Party; that in September, 1949, he headed the Marxist Institute in Los Angeles; that on September 4, 1950, he was present at the meeting of the Civil Rights Congress in Los Angeles, California, (an organization designated by the Attorney General as Communist, F.R. 315, No. 231); that in writing for the "Daily People's World" (Official West Coast organ of the Communist Party of the United States of America), November 10, 1950, issue, he stated among other things in an article entitled "They Can't Deport You", " I told them I am a Communist;" said issue of the "Daily People's World" is attached to, and incorporated as part of, this exhibit; that said petitioner is presently the Los Angeles County Educational Director for the Communist Party of the [fol. 130] United States; that in connection with his deportation hearing at Los Angeles, California, on September 7, 1950, the petitioner refused to answer questions concerning his membership in the Communist Party on the grounds of

self-incrimination; that the Service records show with respect to petitioner's hearings under Service Warrant of arrest that the case was first set for hearing on November 21, 1950, and continued to November 28, 1950, on motion of petitioner's counsel. On the latter date, the case was again continued on motion of petitioner's counsel to January [illegible] 1951. On the latter date on the motion of petitioner's counsel, it was again continued to February 16, 1951.

Attached to and made a part of the amended Exhibit "B" are two photostat sheets of "Our Times" dated November 10, 1950. The first sheet consists of an article most highly praising Communist China with editorial comment. The next sheet is the article allegedly written by Appellant Carlson. The first sheet shows the nature of the publication. The second sheet mirrors Appellant Carlson as strongly Comm istic. Carlson's alleged Communistic activities, as set out in the return and affidavit, are not denied.[5]

The Director argues that his return, as supplemented by the affidavit, is sufficient under our *Carlson* opinion (186 F. 2d 183 (1950)) to show that discretion was used in denying bail to Carlson, and that the determination to deny him bail was reasonable and not arbitrary or capricious.

The appellant argues that there is no such showing under the theory of the *Carlson* opinion. In approaching this question we are reminded of the fact that appellant bears heavily in his argument upon our likening the required showing of fact upon which the discretion of the Attorney General shall be based, to the showing required in a preliminary examination before a magistrate in an arrest for crime. He argues that, so measured, the showing by the Attorney General is insufficient. The analogy is not perfect and was used merely to illustrate the principle that American jurisprudence abhors the imprisonment of any human being without a public justification therefor.

[fol. 131] No person who entertains opposition to established government has a right to attempt or to incite its change or destruction by force and violence, any more than he has the right to take the law into his own hands under

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[5] The general comment from this point to the subtitle "The Appeal of Stevenson" applies to each appellant.

any other grievance. We have in our scheme of government made change relatively easy, once the majority wants it, and any person who takes what is sometimes expressed as *Direct action* (outside of law) is an enemy of the state and of every person in it.

The basic principles of our government that the individual shall be free to speak, free to publish, free to worship, free to be personally unrestrained, are not absolute. It would be an anomalistic use of the term "government" to apply it to a state organization which is without the power to resist its own violent destruction.

It is said by appellant that there is no proof here as to the intention of the Communist Party of the United States or of Communists to maim or destroy our government by force and violence, and cites the *Schneiderman* case (320 U.S. 118 (1943)). The *Schneiderman* case was of yesterday. As Justice Hughes one time so expressively said, "Courts do not function in a vacuum." The courts today are acquainted with current history and, too, with the legislative findings set out in the Internal Security Act of 1950, from which we quoted liberally in the first *Carlson* opinion.

The existence as of today of a world-wide conspiracy against free democratic governments by a major world power using as its vehicle the establishment of Communism by force and violence is perfectly clear and incontrovertible.

The Attorney General is charged with the gravest responsibility. He is by law ordered to deport aliens who are or have been members of the Communist Party since their entry. The judiciary has no right to interfere with that duty, though it must be alert to strike down all arbitrary action.

The district court in the case of Carlson was shown that the Attorney General did submit the evidence furnished him to his considered discretion. The evidence included the professed presently existing status of a "Red" as to Carlson specifically; evidence of leadership in Communistic [fol. 132] organizations; evidence of admitted membership in the Communist Party as late as 1945; evidence that appellant wrote and had published in a recent publication an article entitled "They Can't Deport You". This article most strongly points to Appellant Carlson as a present militant Communist. And we may add that the title page

to the publication contains an article which treats Communism as a doctrine of liberation, and in the most nauseating manner treats the United Nations' condemned aggressor, Communist China, which is now engaged in killing Americans and other Nationals, as an enlightened advance of a people's civilization. There is a marked difference between the showing made at the first hearing before the district court, and the showing made after the remand.

THE APPEAL OF STEVENSON

The proceedings as to Appellant Stevenson follow the pattern detailed hereinbefore as to Appellant Carlson. We take the personal history of this appellant as set up in her petition for issuance of the writ, from our former opinion and order reversing and remanding as of December 20, 1950 (186 F. 2d 196), as follows:

"Petitioner Stevenson was born in England in 1919. At the age of 12 years she was taken to Canada with her family. She entered the United States in 1923 and since has resided in Los Angeles, California. With her mother she visited Canada in 1928 for a few hours and later in the same year she went to Mexico for a few hours where she was married to a United States citizen. In 1929 she made inquiry of the Immigration and Naturalization Service as to her applying for citizenship but her legal entrance into this country was questioned."

The return filed in the earlier proceedings, prior to the remand, contained allegations in substance as follows: That petitioner Stevenson was not being illegally restrained of her liberty; that she was in custody pursuant to warrant of arrest dated October 31, 1950, issued under authority of the Attorney General, directing that the petitioner be taken into custody and granted a hearing to enable her to show cause why she should not be deported in conformity with law; that there was reasonable cause to believe that if said petitioner were enlarged on bail she would engage in activ- [fol. 133] ities which would be prejudicial to the public interest, and would endanger the welfare and safety of the United States.

The return filed by the Director after the remand alleged in substance: That petitioner Stevenson is not being illegally restrained by respondent of her liberty; that she is

a native and subject of Great Britain, born at London, England, on or about August 26, 1907; that a warrant for said petitioner's arrest was issued by authority of the Attorney General on July 8, 1949, charging that she was subject to deportation under the Act of October 16, 1918, as amended (8 U.S.C. §137); that said petitioner was taken into custody on the aforesaid warrant of arrest on July 26, 1949, and on the same date was released from custody on a delivery bond in the sum of $2,000; that, after a hearing on said warrant of arrest, in order to give the petitioner an opportunity to show cause why she should not be deported, a hearing de novo under the Administrative Procedure Act was ordered as a result of the decision of the Supreme Court in the case of *Sung* v. *McGrath*, 339 U.S. 33; that on September 26, 1950, the Attorney General requested the Director to submit a report covering all aliens in the Los Angeles district who were currently active members of the Communist Party and who were under deportation proceedings on charges under the Act of October 16, 1918, as amended (8 U.S.C. §137); that on October 6, 1950, the District Director of Immigration and Naturalization, Los Angeles, California, submitted to the Attorney General a report containing summaries of facts as reflected in the confidential and official records of the Government at Los Angeles in the cases of eleven aliens indicated to be currently active members of the Communist Party, and in the cases of eight aliens indicated to be past members of the Communist Party, all of whom were the subjects of pending deportation proceedings under the Act of October 16, 1918, as amended (8 U.S.C. §137), which report recited facts tending to establish that the aforesaid petitioner was one of the said eleven currently active members of the Communist Party, some of which facts are recited in respondent's affidavit which is attached as a part of the return; that on October 21, 1950, instructions were received by the Director from the Attorney General directing the immediate [fol. 134] apprehension and detention of "* * * all active Communists under proceedings in your district unless detention would result in severe hardship because of individual's physical condition or family situation. * * *"; that pursuant to the aforesaid instructions the petitioner was taken into custody on October 24, 1950, on the afore-

said warrant of arrest issued July 8, 1949; that on October 27, 1950, the radiogram quoted in footnote (4), supra, was received by the Director in Los Angeles from the Attorney General; that on October 31, 1950, while said petitioner continued in custody under the warrant of arrest issued on July 8, 1949, a new warrant of arrest was issued by authority of the Attorney General charging that she was subject to deportation under the Act of October 16, 1918 (8 U.S.C. §137), as amended by the Internal Security Act of 1950, and served upon petitioner, which said warrant of arrest of October 31, 1950, superseded the said warrant of arrest issued on July 8, 1949; a copy of which warrant of arrest of October 31, 1950, is attached as a part of the return; that pursuant to outstanding instructions from the Attorney General the case of petitioner has been given first priority in expediting hearing, to the end that said case may be disposed of as speedily as possible, but delay has been encountered from counsel for petitioner; that the Attorney General has exercised his discretion to take said petitioner into custody and to continue her in custody without bail pending final determination of her deportability, and in exercising said discretion to detain said petitioner without bail the Attorney General has carefully considered facts which in his judgment establish that the petitioner is a currently active member of the Communist Party engaged in the execution of the Program of the Communist Party, the central purpose of which is to subvert the existing government of the United States indirectly by espionage and sabotage and directly by force and violence and to substitute a totalitarian dictatorship committed to the destruction of individual liberty and private property; and that, moreover, said facts cause the Attorney General to believe that if said petitioner were enlarged on bail she would engage in activities which would be prejudicial to the public interest, and would endanger the welfare and safety of the United States—which findings the Attorney General has communicated to the Director.

[fol. 135] The affidavit of the Director contains allegations in substance as follows: That he is the Director and as such is custodian of the records of the United States Immigration and Naturalization Service in said district; that with respect to petitioner Stevenson the Service is in

possession of evidence showing that she has been a member of the Communist Party of the United States and has actively participated in its program; more specifically that the petitioner was a Unit Organizer and a member of the Hollywood Subsection Committee of the Communist Party in 1936; that she was the Secretary of a Communist Party Unit in 1938; that she participated in the "Lenin" celebration in Los Angeles; that she admitted in 1948 attending Communist Party meetings and also admitted membership in the American League for Peace and Democracy (an organization designated by the Attorney General as Communist, F.R. 315, No. 231); that she was a correspondent of the People's Educational Center in 1948 (an organization designated by the Attorney General as Communist, F.R. 315, No. 231); and that in 1950 at a deportation hearing she refused to answer questions concerning her membership in the Communist Party on the ground of self-incrimination; that the Service records show with respect to petitioner's hearings under Service Warrant of Arrest that there have been undue delays in hearings thereunder, that the first case was scheduled for hearing on November 30, 1950, but was taken off calendar at request of petitioner's counsel; that it was next set for hearing on December 6, 1950 and continued on motion of petitioner's counsel; that it was again set for hearing on December 11, 1950, and again continued to December 14, 1950, on motion of petitioner's counsel; that on the latter date the case was again continued on motion of petitioner's counsel to December 15, 1950; and that on the last mentioned date it was again continued on motion of petitioner's counsel and set for hearing January 5, 1951.

The Appeal of Hyun

The proceedings as to Appellant Hyun follow the pattern detailed hereinbefore as to Appellant Carlson. We take the personal history of this appellant as set up in his petition for issuance of the writ, from our former opinion and order reversing and remanding as of December 20, 1950 (186 F. 2d 190), as follows:

[fol. 136] "Petitioner Hyun was born in Seoul, Korea; is 33 years of age; was taken to Hawaii at an early age and resided there until December, 1947. His schooling resulted

in a bachelor of science degree. In school he appears to have been a leader in social and religious activities. Although disqualified for military service during the late war because of his status as an alien, he became Captain of Reserve Officers Training Corps at the University of Hawaii. He has applied for citizenship; is married and has two minor sons. He has resided in Los Angeles, California, since December, 1947, and has engaged in a useful occupation. Petitioner's petition is replete with a detailed account of his life."

The Director's return to the writ issued after remand is much like that recited in the *Carlson* case. It definitely alleges that Appellant Hyun is currently active as a Communist. To the return is attached an affidavit by the Director and made a part thereof. We quote from the affidavit: "* * * with respect to DAVID HYUN, the petitioner herein, the Service is in possession of evidence showing that said petitioner has been a member of the Communist Party and has actively participated in its program; more specifically, that said petitioner was a member of the Communist Party in the Territory of Hawaii and was instrumental in reactivating the Communist Party in Hawaii in 1945; that he led and participated in discussion groups on indoctrination of Communist philosophy, planning, strategy, and recruitment of members in the Communist Party during the years 1946 and 1947; that he advocated redistribution of wealth and government ownership of industry, such as exists in Russia, and that these reforms would take place following the revolution in the United States; that said petitioner was instrumental in forming a Branch of the Hawaiian Civil Liberties Committee on the West Coast soon after his arrival in California from Hawaii in 1947 (an organization designated by the Attorney General as Communist, F.R. 315, No. 231); that he was Educational Director of the Westlake Section of the Communist Party in Los Angeles, California, in 1949."

THE APPEAL OF CARLISLE

The proceedings as to Appellant Carlisle follow the pattern detailed hereinbefore as to Appellant Carlson. We [fol. 137] take the personal history of this appellant as set up in his petition for issuance of the writ, from our former

opinion and order reversing and remanding as of December 20, 1950 (186 F. 2d 190), as follows:

"Petitioner Carlisle was born in England in 1897 and has resided in Los Angeles, California, for the past 15 years."

It was alleged in the return filed in the earlier proceedings, prior to the remand, in substance as follows: That Appellant Carlisle was not being illegally restrained of his liberty; that said petitioner is in the Director's custody pursuant to a warrant of arrest dated October 31, 1950, issued by authority of the Attorney General, directing that petitioner be taken into custody and granted a hearing to enable him to show cause why he should not be deported in conformity with law; that there was reasonable cause to believe that if said petitioner were enlarged on bail he would engage in activities which would be prejudicial to the public interest, and would endanger the welfare and safety of the United States.

The return filed by the Director after the remand contained allegations in substance as follows: Appellant is not being illegally restrained by respondent of his liberty; that he is a native and subject of Great Britain, born at London, England, on or about September 23, 1897; that a warrant for said petitioner's arrest was issued by authority of the Attorney General on June 13, 1950, charging that he was subject to deportation under the Act of October 16, 1918, as amended (8 U.S.C. §137); that he was taken into custody on the aforesaid warrant of arrest on June 16, 1950, and on June 19, 1950, was released from custody on a delivery bond in the sum of $5,000; that, after a hearing on said warrant of arrest to give said petitioner an opportunity to show cause why he should not be deported, a hearing de novo under the Administrative Procedure Act was ordered as a result of the decision of the Supreme Court in the case of *Sung* v. *McGrath*, 339 U.S. 33; that on September 26, 1950, the Acting Commissioner of Immigration and Naturalization under the Attorney General at Washington, D. C., requested the Director at Los Angeles, California, to submit a report covering all aliens in the Los Angeles district who were currently active members of the Communist Party and who were under deportation [fol. 138] proceedings on charges under the Act of Octo-

ber 16, 1918, as amended (8 U.S.C. §137); that on October 6, 1950, the Director submitted a report containing summaries of facts as reflected in the confidential and official records of the Government at Los Angeles in the cases of eleven aliens indicated to be currently active members of the Communist Party, and in the cases of eight aliens indicated to be past members of the Communist Party, all of whom were the subjects of pending deportation proceedings under the Act of October 16, 1918, as amended (8 U.S.C. §137), which report recited facts tending to establish that the aforesaid petitioner was one of the said eleven currently active members of the Communist Party, some of which facts are recited in respondent's affidavit attached as a part of the return; that on October 21, 1950, instructions were received by the Director from the Attorney General directing the immediate apprehension and detention of Carlisle; that pursuant to the aforesaid instructions he was taken into custody on October 21, 1950, on the aforesaid warrant of arrest issued on June 13, 1950; that on October 27, 1950, the radiogram set out in footnote (4), supra, was received by the Director in Los Angeles from the Attorney General; that on October 31, 1950, while said petitioner continued in custody under the warrant of arrest issued on June 13, 1950, a new warrant of arrest was issued charging that appellant was subject to deportation under the Act of October 16, 1918 (8 U.S.C. §137), as amended by the Internal Security Act of 1950, and served upon said petitioner, which said warrant superseded the June 13, 1950, warrant; that pursuant to the Attorney General's instructions the case of petitioner has been given first priority to the end that it may be speedily heard; that the Attorney General has exercised his discretion to continue appellant in custody without bail pending final determination of his deportability, and in exercising said discretion to detain him without bail the Attorney General has carefully considered facts which in his judgment establish that the said petitioner is a currently active member of the Communist Party engaged in the execution of the program of the Communist Party, the central purpose of which is to subvert the existing government of the United States indirectly by espionage and sabotage and directly by force and violence and to substitute a totalitarian dictatorship

committed to the destruction of individual liberty and pri-
[fol. 139] vate property; and that said facts cause the Director and the Attorney General to believe that if said petitioner were enlarged on bail he would engage in activities which would be prejudicial to the public interest, and would endanger the welfare and safety of the United States —which findings the said Attorney General has communicated to the Director.

The affidavit of the Director contains allegations in substance as follows: That he is the said Director and as such is custodian of the records of the United States Immigration and Naturalization Service in said district; that with respect to petitioner Harry Carlisle, the Service is in possession of evidence showing that said petitioner has been a member of the Communist Party of the United States and has actively participated in its program; more specifically, that in 1932 petitioner stated that he was in favor of the overthrow of the government of the United States and would go to any means to attain that end; that petitioner was a speaker at closed meetings of Communist Party functionaries in 1933; that in 1935 said petitioner was editor of the "Western Worker" (the then official Western organ of the Communist Party of the United States of America, Section of the Communist International); that in 1937 said petitioner was a member of the League of American Writers (an organization designated by the Attorney General as Communist, F.R. 315, No. 231); that in 1949 said petitioner was reported in the Press as speaker on Communist Party topics and activities; that in 1949 said petitioner was active in the affairs of the American-Russian Institute and was on its list of approved speakers (said organization has been designated by the Attorney General as Communist, F.R. 315, No. 231); that in August, 1950, said petitioner was a speaker at a meeting of the Civil Rights Congress in Los Angeles, California, (an organization designated by the Attorney General as Communist, F.R. 315, No. 231); that at hearings held in connection with deportation proceedings, petitioner refused to answer questions regarding his membership in the Communist Party on the ground of self-incrimination; that the Service Records show with respect to petitioner's hearings under Service warrant of arrest that the case was first

set for hearing on November 22, 1950, and upon motion of petitioner's counsel was continued to November 28, 1950; that on that date the case was again continued to December [fol. 140] 13, 1950, on motion of petitioner's counsel; and that on the latter date it was again continued on motion of petitioner's counsel.

We are of the opinion and hold that the showing made by the Director's affidavits and returns, many of the salient features of which are undenied, constitutes evidence in support of the district court's holding that a sufficient showing had been made in support of the Director's refusal to enlarge any of the appellants on bail, and that the Attorney General did not abuse his discretion in his order to the Director denying bail to any of them.

We append some citations of authorities by way of a case note. They are by no means complete.[6] The authorities do,

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[6] *Ex parte Perkov*, D.C.Cal., 45 F.Supp. 864 (1942), (application of Eighth Amendment to deportation proceedings); *Principe* v. *Ault*, D.C.Ohio, 62 F.Supp. 279 (1945), (power of court to admit to bail in deportation cases); *United States ex rel. Zapp et al.* v. *District Director of Immigration and Naturalization*, 2 Cir., 120 F.2d 762 (1941), (expulsion of aliens is a legislative function); *United States ex rel. Carapa* v. *Curran*, 2 Cir., 297 F. 946 (1924), (bail in deportation proceedings is a matter of statute); *American Communications Association* v. *Douds*, 339 U.S. 382 (1950), (findings of Congress may permissibly be used to assist in the interpretation and application of legislation); *United States ex rel. Potash* v. *District Director*, 2 Cir., 169 F.2d 747 (1948), (factors to consider in deciding whether bail shall be allowed); *United States ex rel. Pirinsky* v. *Shaughnessy*, 2 Cir., 177 F.2d 708 (1949), (amount of bail); *In re Lum Poy*, C.C.D. Mont., 128 F. 974 (1904), (Chinese held for deportation under exclusion Act bailable); *Chin Wah* v. *Colwell*, 9 Cir., 187 F. 592 (1911), (order denying bail in Chinese deportation proceedings affirmed); *United States ex rel. Bauer* v. *McGrath*, D.C.N.Y., 87 F.Supp. 698 (1949), (bail *after* alien held deportable); *United States* v. *Fah Chung*, D.C.S.D. Georgia, 132 F. 109 (1904), (Chinese not entitled to bail as a matter of right *after* final order of deportation); *Williamson* v. *United*

we think, clearly indicate that an important area of bail [fol. 141] and habeas corpus law is viewed by the various federal courts in various lights. An alien presently in the United States may be intercepted and excluded if the Congress wills it. It has willed it with certain conditions which must be concluded after a hearing. The Attorney General has the discretion to grant or deny bail after the alien has been arrested and prior to the required hearing. We reason that such discretion carries with it the usual requirements

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States, 2 Cir., 184 F.2d 280 (1950), (Communists convicted of conspiring to advocate and teach the violent overthrow of the United States government held bailable pending appeal);

In *Knauff* v. *Shaughnessy*, 338 U.S. 537 (1950), the court stated at page 543:

"'Thus the decision to admit or to exclude an alien may be lawfully placed with the President, who may in turn delegate the carrying out of this function to a responsible executive officer of the sovereign, such as the Attorney General. The action of the executive officer under such authority is final and conclusive. Whatever the rule may be concerning deportation of persons who have gained entry into the United States, it is not within the province of any court, unless expressly authorized by law, to review the determination of the political branch of the government to exclude an alien.'"

At page 544 the court states: "In the particular circumstances of the instant case the Attorney General, exercising the discretion entrusted to him by Congress and the President, concluded upon the basis of confidential information that the public interest required that petitioner be denied the privilege of entry into the United States. He denied her a hearing on the matter because, in his judgment, the disclosure of the information on which he based that opinion would itself endanger the public security."

At page 548, in a footnote to the dissenting opinion by Justice Frankfurter, it is stated:

"The Attorney General is to act on information that satisfies him; not only is there no opportunity for a hearing, but the Attorney General can lock in his own bosom the evidence that does satisfy him * * *." Justice Jackson, with Justice Black, also dissented.

that it shall not be exercised abitrarily or capriciously, and that the courts through the exercise of the writ of habeas corpus have the power to test whether or not the decision has a reasonable basis in relevant facts. We are fully cognizant of the fact that a large part of the allegations in the Director's return and the statements in his affidavits would not constitute evidence in a criminal case nor at the deportation hearings. To prove such allegations and statements foundations, of course, would have to be laid. However, the issue here, as we have tried to make clear, is not the guilt or innocence of the appellant-petitioners, nor must it be taken from what we have said that the district court has the power to substitute its discretion for that of the Attorney General. The issue before the district court was whether, after viewing the whole case as to each appellant-petitioner, it could be found that the Attorney General abused his discretion in denying bail.

[fol. 142] In the cases in suit the district court weighed the evidence in the light of the times and, we think, came to the correct and legal conclusions. As to each appellant the judgment is affirmed.

Affirmed.

(Endorsed:) Opinion. Filed Mar. 13, 1951. Paul P. O'Brien, Clerk.

[fol. 143] UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 12742.

FRANK CARLSON, etc., *Appellant*,

vs.

HERMAN R. LANDON, etc., *Appellee*.

JUDGMENT—March 13, 1951

Appeal from the United States District Court for the Southern District of California, Central Division.

This cause came on to be heard on the Transcript of the Record from the United States District Court for the South-

ern District of California, Central Division, and was duly submitted.

On consideration whereof, It is now here ordered and adjudged by this Court, that the order of the said District Court in this cause be, and hereby is, affirmed.

[fol. 144] UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 12743.

MIRIAM CHRISTINE STEVENSON, etc., *Appellant*,

vs.

HERMAN R. LANDON, etc., *Appellee*.

JUDGMENT—March 13, 1951

Appeal from the United States District Court for the Southern District of California, Central Division.

This cause came on to be heard on the Transcript of the Record from the United States District Court for the Southern District of California, Central Division, and was duly submitted.

On consideration whereof, It is now here ordered and adjudged by this Court, that the order of the said District Court in this cause be, and hereby is, affirmed.

[fol. 145] UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 12744.

DAVID HYUN, *Appellant*,

vs.

HERMAN R. LANDON, etc., *Appellee*.

JUDGMENT—March 13, 1951

Appeal from the United States District Court for the Southern District of California, Central Division.

This cause came on to be heard on the Transcript of the Record from the United States District Court for the Southern District of California, Central Division, and was duly submitted.

On consideration whereof, It is now here ordered and adjudged by this Court, that the order of the said District Court in this cause be, and hereby is, affirmed.

[fol. 146] UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 12745.

HARRY CARLISLE, etc., *Appellant*,

vs.

HERMAN R. LANDON, etc., *Appellee*.

JUDGMENT—March 13, 1951

Appeal from the United States District Court for the Southern District of California, Central Division.

This cause came on to be heard on the Transcript of the Record from the United States District Court for the South-

ern District of California, Central Division, and was duly submitted.

On consideration whereof, It is now here ordered and adjudged by this Court, that the order of the said District Court in this cause be, and hereby is, affirmed.

[f. 147] Clerks' Certificate to foregoing transcript omitted in printing.